

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

2004

Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter III. General review of the legal activities of the United Nations and related intergovernmental organizations



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## Chapter III

### GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF THE UNITED NATIONS

##### 1. Membership of the United Nations

As at 31 December 2004, the number of Member States remained at 191.

##### 2. Peace and security

###### (a) Peacekeeping missions and operations

###### (i) *Peacekeeping operations and missions established in 2004*

###### a. Côte d'Ivoire

On 27 February 2004, the Security Council adopted resolution 1528 and, acting under Chapter VII of the Charter, decided to establish the United Nations Operation in Côte d'Ivoire (UNOCI) for an initial period of 12 months as from 4 April 2004. The Security Council requested the Secretary-General to transfer authority from the United Nations Mission in Côte d'Ivoire (MINUCI) and the Economic Community of West African States (ECOWAS) forces to UNOCI on 4 April 2004.

The Security Council also decided that UNOCI, in coordination with the French forces stationed in Côte d'Ivoire as authorized in the resolution, would have the mandate to facilitate the implementation by the Ivorian parties of the peace agreement signed by them in January 2003 by, *inter alia*, monitoring the ceasefire and movements of armed groups; assisting in the disarmament, demobilization and reintegration programme and in the establishment of a secure environment for humanitarian assistance, United Nations personnel and civilians in general; assisting the Government of National Reconciliation in the electoral process; providing advice in the restoration of law and order; and contributing to the promotion and protection of human rights in the country.

The Council further requested the Secretary-General and the Government of National Reconciliation to conclude a status-of-forces agreement within 30 days of adoption of the resolution, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated

Personnel, 1994,<sup>1</sup> and noted that, pending the conclusion of such an agreement, the model status-of-forces agreement of 9 October 1990 shall apply provisionally.<sup>2</sup>

### b. Haiti

On 20 April 2004, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1542, by which it decided to establish, as envisaged in resolution 1529 (2004), the United Nations Stabilization Mission in Haiti (MINUSTAH) for an initial period of six months, to succeed to the Multinational Interim Force (MIF),<sup>3</sup> and requested that authority be transferred from MIF to MINUSTAH on 1 June 2004.

MINUSTAH's mandate included providing assistance to the Transitional Government in reforming the national police, implementing a disarmament, demobilization and reintegration programme, restoring the rule of law, public safety and public order and protecting United Nations personnel and civilians. It was also mandated to, *inter alia*, support the political process by fostering principles, democratic governance and institutional development and the organization of free elections, and to support the Transitional Government in promoting and protecting human rights and investigating violations thereof.

The Council further requested the Haitian authorities to conclude a status-of-forces agreement with the Secretary-General within 30 days of adoption of the resolution, and noted that, pending the conclusion of such an agreement, the model status-of-forces agreement of 9 October 1990 shall apply provisionally.

By resolution 1576 adopted on 29 November 2004, the Security Council, acting under Chapter VII of the Charter, decided to extend the mandate of MINUSTAH until 1 June 2005, with the intention to renew it for further periods.

### c. Burundi

The United Nations Operation in Burundi (ONUB) was established for an initial period of six months by Security Council resolution 1545 adopted on 21 May 2004. The Security Council, acting under Chapter VII of the Charter, decided to authorize the deployment of a peacekeeping operation in Burundi in order to support and help to implement efforts undertaken by Burundians to restore lasting peace and bring about national reconciliation, as provided under the Arusha Peace and Reconciliation Agreement for Burundi, signed at Arusha on 28 August 2000.

The Security Council authorized ONUB to use all necessary means to carry out its mandate, within its capacity and in the areas where its armed units are deployed, and in coordination with humanitarian and development communities. The mandate of ONUB consists in, *inter alia*, monitoring ceasefire agreements and disarmament and demobilization programmes; contributing to the creation of a secure environment for the return of refugees and displaced persons and the completion of the electoral process; and assisting

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<sup>1</sup> United Nation, *Treaty Series*, vol. 2051, p. 363.

<sup>2</sup> A/45/594.

<sup>3</sup> The deployment of MIF was authorized by Security Council resolution 1529 (2004) and is discussed further under the heading "Action of Member States authorized by the Security Council".



and advising the transitional Government in its constitutional and institutional reforms, including of the judiciary.

The Council requested the transitional Government of Burundi to conclude a status-of-forces agreement for ONUB with the Secretary-General within 30 days, taking into consideration General Assembly resolution 58/82 on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994, and noted that pending the conclusion of such an agreement, the model status-of-forces agreement for peacekeeping operations of 9 October 1990 shall apply provisionally.

On 1 December 2004, the Security Council adopted resolution 1577, and acting under Chapter VII of the Charter, the Council extended the mandate of ONUB, as defined in its resolution 1545 (2004), to 1 June 2005.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2004*

**a. Cyprus**

The Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964). The Security Council, by resolution 1548 adopted on 11 June 2004 and resolution 1568 adopted on 22 October 2004, extended the mandate of UNFICYP until 15 December 2004 and 15 June 2005, respectively.

**b. Syria and Israel**

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974). The Security Council, by resolution 1525 adopted on 30 January 2004, resolution 1550 adopted on 29 June 2004 and resolution 1578 adopted on 15 December 2004, extended UNDOF's mandate until 31 July 2004, 31 December 2004 and 30 June 2005, respectively.

**c. Lebanon**

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978). The Security Council, by resolution 1553 adopted on 29 July 2004, extended UNIFIL's current mandate until 31 January 2005.

**d. Western Sahara**

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991). The Security Council, by resolution 1570 adopted on 28 October 2004, extended the mandate of MINURSO until 30 April 2005.

**e. Georgia**

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993). The Security Council, by resolution 1524 adopted on 30 January 2004 and resolution 1554 adopted on 29 July 2004, extended UNOMIG's mandate, until 31 July 2004 and 31 January 2005, respectively.

#### f. Sierra Leone

The United Nations Mission in Sierra Leone (UNAMSIL) was established by Security Council 1270 (1999). The Security Council, by resolution 1537 adopted on 30 March 2004 and resolution 1562 adopted on 17 September 2004, extended UNAMSIL's mandate, until 30 September 2004 and 30 June 2005, respectively.

#### g. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999). On 12 March 2004, the Security Council adopted resolution 1533 and, acting under Chapter VII of the Charter, requested MONUC to continue to use all means, within its capabilities, to carry out the tasks outlined in resolution 1493 (2003) and, in particular, to inspect, without notice as it deems it necessary, the cargo of aircraft and of any transport vehicle using the ports, airports, airfields, military bases and border crossings in North and South Kivu and in Ituri.

The Security Council, by resolution 1565 adopted on 1 October 2004, acting under Chapter VII of the Charter, extended the deployment of MONUC until 31 March 2005 and gave MONUC a series of new responsibilities, including the protection of civilians under imminent threat of violence. The Council also set forth a series of tasks for MONUC to carry out in support of the Government of National Unity and Transition, including contributing to improved security conditions and assistance in the promotion and protection of human rights.

#### h. Ethiopia and Eritrea

The United Nations Mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 (2000). The Security Council, by resolution 1560 adopted on 22 October 2004, extended the mandate of UNMEE until 15 March 2005.

#### i. Timor-Leste

The United Nations Mission of Support in East Timor (UNMISSET) was established by Security Council resolution 1410 (2002). By its resolution 1543 adopted on 14 May 2004, the Security Council decided to extend the mandate of UNMISSET for a period of six months with a view to subsequently extending the mandate for a further and final period of six months, until 20 May 2005. Furthermore, the Security Council also decided to reduce the size of UNMISSET and to revise its tasks to consist of, *inter alia*, providing support for the public administration and justice system of Timor-Leste and for justice in the area of serious crimes; for the development of law enforcement; and for the security and stability of the country.

By Security Council resolution 1573 adopted on 16 November 2004, UNMISSET's mandate was extended for a final period of six months until 20 May 2005.

## j. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003). The Security Council, by resolution 1561 adopted on 17 September 2004, decided to extend the mandate of UNMIL until 19 September 2005.

### (iii) *Other ongoing peacekeeping operations or missions in 2004*

During 2004, there were a number of other ongoing peacekeeping operations or missions, including the United Nations Truce Supervision Organization (UNTSO) in Israel, established by Security Council resolution 50 (1948); the United Nations Military Observer Group in India and Pakistan (UNMOGIP), established by Security Council resolution 91 (1951); and the United Nations Interim Mission in Kosovo (UNMIK), established by Security Council resolution 1244 (1999).

### (iv) *Peacekeeping operations or missions concluded in 2004*

No peacekeeping operations or missions were concluded during 2004.

## (b) Political and peacebuilding missions and offices

### (i) *Political and peacebuilding missions and offices established in 2004*

#### a. Bougainville (Papua New Guinea)

The United Nations Observer Mission in Bougainville (Papua New Guinea) (UNOMB) was established<sup>4</sup> on 1 January 2004 by the Secretary-General with a mandate to assist in the promotion of the political process under the Lincoln Agreement<sup>5</sup> of 23 January 1998 and the Bougainville Peace Agreement between the Government of Papua New Guinea and the Bougainville parties of 30 August 2001. Conceived as a follow-on mission to the United Nations Political Office in Bougainville (UNPOB), established in August 1998, UNOMB's activities focus on weapons destruction, the constitutional process and, if requested by the parties, the certification of whether the level of security is conducive to the holding of elections of an autonomous Bougainville Government. In December 2004, the mandate of UNOMB was extended for a period of six months, until 30 June 2005.<sup>6</sup>

#### b. The Sudan

The United Nations Advance Mission in the Sudan (UNAMIS) was established following the adoption by the Security Council of resolution 1547 (2004), which welcomed

<sup>4</sup> On 23 December 2003, the Security Council took note of the intention of the Secretary-General to downsize the United Nations Political Office in Bougainville and to establish UNOMB as its successor. See the exchange of letters between the Secretary-General and the President of the Security Council dated 23 December 2003 (S/2003/1198 and S/2003/1199).

<sup>5</sup> S/1998/287.

<sup>6</sup> See the exchange of letters between the Secretary-General and the President of the Security Council dated 21 and 23 December 2004, respectively (S/2004/1015 and S/2004/1016).

the proposal of the Secretary-General to establish, for a period of three months and under the authority of a Special Representative of the Secretary-General (SRSG), a United Nations advance team in the Sudan as a special political mission dedicated to the preparation of the international monitoring foreseen in the 2003 Naivasha Agreement on Security Arrangements,<sup>7</sup> to facilitate contacts with the parties concerned and to prepare for the introduction of a peace support operation following the signing of a comprehensive peace agreement.

The Security Council, by its resolution 1556 adopted on 30 July 2004, acting under Chapter VII of the Charter, extended the special political mission for an additional 90 days to 10 December 2004. On 18 September 2004, the Security Council adopted resolution 1574 and extended the mandate of UNAMIS by a further three months, until 10 March 2005.

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions and offices in 2004*

**a. Guinea-Bissau**

The United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) was established in March 1999 by the Secretary-General, with the support of the Security Council.<sup>8</sup> On 22 December 2004, the Council, by resolution 1580, decided to further extend and revise the mandate of UNOGBIS, as a special political mission, for one year, in light of the diverse tasks and risks facing the mission after the conclusion of Guinea-Bissau's transitional process. The mandate was therefore expanded to include other peacebuilding activities, such as the enhancement of the rule of law and human rights, the reform of the security sector, the mobilization of international financial assistance, and the strengthening of state institutions and structures.

**b. West Africa**

The United Nations Office for West Africa (UNOWA) was established for a period of three years from January 2002.<sup>9</sup> In October 2004, its mandate was extended for a further period of three years from 1 January 2005 to 31 December 2007.<sup>10</sup>

**c. Afghanistan**

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002). On 26 March 2004, the Security Council, by its resolution 1536, decided to extend UNAMA's mandate for an additional period of 12 months from the date of the adoption of the said resolution.

<sup>7</sup> See letter dated 2 February 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council (S/2003/934).

<sup>8</sup> See letter dated 26 February 1999 from the Secretary-General addressed to the President of the Security Council (S/1999/232) and Security Council resolution 1233 (1999).

<sup>9</sup> See the exchange of letters between the Secretary-General and the President of the Security Council, dated 26 November 2001 (S/2001/1128) and 29 November 2001 (S/2001/1129), respectively.

<sup>10</sup> See the exchange of letters between the Secretary-General and the President of the Security Council, dated 6 October 2004 (S/2004/797) and 25 October 2004 (S/2004/858), respectively.

#### d. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by the Security Council on 14 August 2003 by resolution 1500. On 8 June 2004, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1546 relating to, *inter alia*, UNAMI, the Special Representative of the Secretary-General for Iraq, the Government of Iraq and the multinational force. Select parts of the resolution are discussed below.

##### (i) *Mandate of the Special Representative of the Secretary-General and of UNAMI*

The Security Council decided that in implementing, as circumstances permitted, their mandate to assist the Iraqi people and Government, the Special Representative of the Secretary-General and UNAMI, as requested by the Government of Iraq, shall, among other things, assist and advise in the political process and reconstruction and rehabilitation activities.

##### (ii) *Government of Iraq*

The Security Council endorsed the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which would assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected Transitional Government of Iraq assumed office, as envisaged in the resolution.

The Council welcomed that, also by 30 June 2004, the occupation would end and the Coalition Provisional Authority would cease to exist, and that Iraq would reassert its full sovereignty. Further, the Security Council reaffirmed the right of the Iraqi people freely to determine their own political future and to exercise full authority and control over their financial and natural resources.

The Security Council also endorsed the proposed timetable for Iraq's political transition to a democratic government, including the convening of a national conference reflecting the diversity of the Iraqi society and the holding of direct democratic elections by 31 December 2004, if possible, and in no case later than 31 January 2005, to a Transitional National Assembly. Such an Assembly would, *inter alia*, have responsibility for forming a Transitional Government of Iraq and drafting a permanent constitution, leading to a constitutionally elected government by 31 December 2005.

##### (iii) *Multinational Force*

The Security Council noted that the presence of the multinational force in Iraq was at the request of the incoming Interim Government of Iraq and, therefore, reaffirmed the authorization for the multinational force under unified command established under resolution 1511 (2003).

The Council also decided that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to the resolution expressing, *inter alia*, the Iraqi request for the continued presence of the multinational force. The responsibilities of the multinational force included the prevention and deterrence of terrorism so that, *inter alia*, the United Nations could fulfil its role in assisting the Iraqi people, as outlined in the resolution, and the Iraqi people could implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities.

The Security Council further decided that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or 12 months from the date of the resolution, and that the mandate shall expire upon the completion of the political process set out in the resolution. However, it also declared that it would terminate the mandate earlier if requested by the Government of Iraq.

(iv) *Development Fund for Iraq*

The Security Council decided that, in connection with the dissolution of the Coalition Provisional Authority, the Interim Government of Iraq and its successors shall assume the rights, responsibilities and obligations relating to the Oil-for-Food Programme that were transferred to the Authority, including the operational responsibility for the Programme and any obligations undertaken by the Authority in that connection and for ensuring independently authenticated confirmation that goods have been delivered.

By its resolution 1557 adopted on 12 August 2004, the Security Council extended the mandate of UNAMI for a period of 12 months from the date of the resolution.

(iii) *Other ongoing political and peacebuilding missions and offices in 2004*

The following political and peacebuilding missions were operating in 2004: the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), since 1 October 1999; the United Nations Political Office for Somalia (UNPOS), since 15 April 1995; the United Nations Peacebuilding Office in the Central African Republic (BONUCA), since 15 February 2000; the Office of the Special Representative of the Secretary-General for the Great Lakes Region, since 19 December 1997; and the United Nations Tajikistan Office of Peacebuilding (UNTOP), since 1 June 2000.

(iv) *Political and peacebuilding missions concluded in 2004*

**a. Burundi**

The United Nations Office in Burundi (UNOB), established on 25 October 1993, was absorbed into the United Nations Operation in Burundi on 21 May 2004.

**b. Guatemala**

The United Nations Verification Mission in Guatemala (MINUGUA), established on 19 September 1994, concluded its mandate on 31 December 2004.

**c. Côte d'Ivoire**

The United Nations Mission in Côte d'Ivoire (MINUCI), established pursuant to Security Council resolution 1479 (2003), ended upon the transfer of authority from MINUCI to UNOCI, pursuant to resolution 1528 adopted on 27 February 2004.<sup>11</sup>

<sup>11</sup> The establishment of UNOCI is discussed above under the heading "Peacekeeping operations and missions established in 2004".

### (c) Other peacekeeping matters

At its fifty-eighth session, on 1 July 2004, the General Assembly adopted resolution 58/315<sup>12</sup> entitled “Comprehensive review of the whole question of peacekeeping operations in all their aspects”. The resolution welcomed the report of the Special Committee on Peacekeeping Operations,<sup>13</sup> endorsed the Committee’s proposals, recommendations and conclusions, and urged Member States, the Secretariat and relevant organs of the United Nations to take all necessary steps to implement the proposals, recommendations and conclusions of the Special Committee.

### (d) Action of Member States authorized by the Security Council

#### (i) *Action of Member States authorized in 2004*

##### Haiti

On 29 February 2004, the Security Council adopted resolution 1529 and, acting under Chapter VII of the Charter, authorized the immediate deployment of a Multinational Interim Force (MIF) for a period of not more than three months from the adoption of the resolution, prior to the establishment of a follow-on United Nations stabilization force<sup>14</sup> to support the continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment. The Council authorized the Member States participating in the MIF in Haiti to take all necessary measures to fulfil its mandate.

By its resolution 1542 adopted on 30 April 2004, the Security Council, acting under Chapter VII of the Charter, decided to establish MINUSTAH and requested that authority be transferred from MIF to MINUSTAH on 1 June 2004. It also authorized the remaining elements of MIF to continue carrying out its mandate under resolution 1529 (2004), within the means available, for a transition period not exceeding 30 days from 1 June 2004, as required and requested by MINUSTAH.

#### (ii) *Changes in authorization and/or extension of time limits in 2004*

##### a. Côte d’Ivoire

In its resolution 1527 adopted on 4 February 2004, the Security Council, acting under Chapter VII of the Charter, decided to renew until 27 February 2004 the authorization set out in resolution 1464 (2003) given to Member States participating in ECOWAS forces together with the French forces supporting them.

In resolution 1528 adopted on 27 February 2004, the Security Council, acting under Chapter VII of the Charter, decided, *inter alia*, to establish the United Nations Operation in Côte d’Ivoire (UNOCI)<sup>15</sup> for an initial period of 12 months as from 4 April 2004, and

<sup>12</sup> The resolution was adopted without a vote.

<sup>13</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 19 (A/58/19)*.

<sup>14</sup> The establishment of MINUSTAH is discussed under the heading “Peacekeeping operations and missions established in 2004”.

<sup>15</sup> The establishment of UNOCI is discussed under the heading “Peacekeeping operations and missions established in 2004”.

requested the Secretary-General to transfer authority from MINUCI and ECOWAS forces to UNOCI on that date. In addition, the Security Council decided to renew, until 4 April 2004, the authorization given to the French forces and ECOWAS forces in resolution 1527 (2004). Furthermore, the Council authorized for a period of 12 months, from 4 April 2004, the French forces to use all necessary means in order to support UNOCI in accordance with the agreement to be reached between UNOCI and the French authorities.

### b. Afghanistan

In its resolution 1563 adopted on 17 September 2004, the Security Council, acting under Chapter VII of the Charter, decided to extend the authorization of the International Security Assistance Force (ISAF), as set out in resolutions 1386 (2001) and 1510 (2003), for a period of 12 months beyond 13 October 2004 and further authorized the Member States participating in ISAF to take all necessary measures to fulfil its mandate.

### c. Bosnia and Herzegovina

The Security Council, in resolution 1551 adopted on 9 July 2004, acting under Chapter VII of the Charter, authorized the Member States acting through or in cooperation with the North Atlantic Treaty Organization (NATO) to continue for a further planned period of six months the multinational stabilization force (SFOR), as established in accordance with Security Council resolution 1088 (1996), under unified command and control in order to fulfil the role specified in annex 1-A and annex 2 of the Peace Agreement.<sup>16</sup>

The Council also decided that the status-of-forces agreements contained in appendix B to annex 1-A of the Peace Agreement shall apply provisionally in respect to the proposed European Union (EU) mission and its forces, including from the point of their build-up in Bosnia and Herzegovina, in anticipation of the concurrence of the parties to those agreements to that effect.

Subsequently, in its resolution 1575 of 22 November 2004, the Security Council, acting under Chapter VII of the Charter, authorized the Member States acting through or in cooperation with the EU to establish for an initial planned period of 12 months, a multinational stabilization force (EUFOR) as a legal successor to SFOR under unified command and control. EUFOR would fulfil its missions in relation to the implementation of annex 1-A and annex 2 of the Peace Agreement in cooperation with the NATO Headquarter presence, in accordance with the arrangements agreed between NATO and the EU, as communicated to the Security Council in their letters of 19 November 2004,<sup>17</sup> which recognize that EUFOR will have the main peace stabilization role under the military aspects of the Peace Agreement.

Furthermore, the Council authorized the Member States acting under paragraphs 10 and 11 of resolution 1575 (2004), to take all necessary measures to effect the implementation of and to ensure compliance with annexes 1-A and 2 of the Peace Agreement, and stressed that the parties shall continue to be held equally responsible for compliance with that annex and that they shall be equally subject to such enforcement action by EUFOR

<sup>16</sup> A/50/790-S/1995/999, annex.

<sup>17</sup> S/2004/915 and S/2004/916.



and the NATO presence as may be necessary to ensure implementation of those annexes and the protection of EUFOR and the NATO presence.

**(e) Sanctions imposed under Chapter VII of the  
Charter of the United Nations**

*(i) Measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them*

By resolution 1526 adopted on 30 January 2004, the Security Council, acting under Chapter VII of the Charter, decided to improve the implementation of measures imposed by resolutions 1267 (1999), 1333 (2000) and 1390 (2002) with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created by the Committee established pursuant to resolution 1267 (1999).

The Council decided, *inter alia*, to strengthen the mandate of the Committee to include, in addition to the oversight of States' implementation of the measures referred to in resolution 1267 (1999), a central role in assessing information for the Council's review regarding their effective implementation, as well as in recommending improvements thereof.

The Security Council further decided, in order to assist the Committee in the fulfilment of its mandate, to establish for a period of 18 months an Analytical Support and Sanctions Monitoring Team under the direction of the Committee, with the responsibilities enumerated in an annex to the resolution.

*(ii) Liberia*

In its resolution 1532 adopted on 12 March 2004, the Security Council, acting under Chapter VII of the Charter, decided that to prevent former Liberian President Charles Taylor, his immediate family members, senior officials of the former Taylor regime, or other close allies or associates, from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and in the subregion, all States in which there are, at the date of adoption of the resolution or at any time thereafter, funds, other financial assets and economic resources owned or controlled directly or indirectly by such individuals, shall freeze without delay all such resources, and shall ensure that no such resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons.

The Council also decided that the Committee, established by resolution 1521 (2003), shall, *inter alia*, identify the individuals and entities described in the resolution as senior officials, other close allies or associates of the former Taylor regime, and promptly circulate to all States a list of said individuals and entities. The Committee was further requested to regularly update and review the list every six months and assist States in tracing and freezing funds, other financial assets and economic resources.

On 14 June 2004, the Committee issued its list of individuals and entities subject to the measures contained in resolution 1532 (2004) (the “assets-freeze list”).<sup>18</sup>

On 17 June 2004, the Security Council adopted resolution 1549 and, *inter alia*, decided to re-establish the Panel of Experts appointed pursuant to resolution 1521 (2003) to undertake a number of tasks, including the compilation of a report on the implementation and violation of the measures referred to in resolution 1521 (2003) and to monitor the implementation and enforcement of the measures imposed by resolution 1532 (2004).

On 23 November 2004, the Panel of Experts delivered a final report concerning measures imposed by resolutions 1521 (2003) and 1532 (2004).<sup>19</sup>

In resolution 1579 adopted on 21 December 2004, the Security Council, acting under Chapter VII of the Charter, decided, on the basis of its assessment of progress made by the National Transitional Government of Liberia towards meeting the conditions for the lifting of the measures imposed by resolution 1521 (2003), to renew such measures on arms, travel, timber and diamonds, for a further period of 12 months and to review them after six months.

### (iii) *Democratic Republic of the Congo*

On 12 March 2004, the Security Council adopted resolution 1533 and, acting under Chapter VII of the Charter, reaffirmed the demand laid down in resolution 1493 (2003) that all States take the necessary measures to prevent the supply of arms and any related materiel or assistance to armed groups operating in North and South Kivu and in Ituri, and to groups not party to the Global and All-Inclusive agreement on the Transition in the Democratic Republic of the Congo (signed in Pretoria on 17 December 2002).<sup>20</sup>

In the same resolution, the Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee with the task to seek from all States, and particularly those in the region, information regarding the actions taken by them to implement the measures imposed by resolution 1493 (2003) and to examine, and to take appropriate action on, information concerning alleged violations of those measures.

Furthermore, the Council requested the Secretary-General to create, for a period expiring on 28 July 2004, a group of experts having the necessary skills, *inter alia*, to examine and analyse information gathered by MONUC in the context of its monitoring mandate, and to gather and analyse all relevant information on the flow of arms and related materiel as well as networks operating in violation of the measures imposed by resolution 1493 (2003). The Group of Experts was further requested to consider and recommend ways of improving the capabilities of States interested in ensuring that the measures imposed by resolution 1493 (2003) are effectively implemented and to provide them with a list, with supporting evidence, of those found to have violated those measures, for possible future action by the Council.

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<sup>18</sup> S/2004/1025.

<sup>19</sup> S/2004/955.

<sup>20</sup> S/2002/914.

The Group of Experts submitted its first report<sup>21</sup> on 15 July 2004 and by resolution 1552 of 27 July 2004, the Security Council re-established the Group of Experts for a period expiring on 31 January 2005.

(iv) *The Sudan*

On 30 July 2004, the Security Council adopted resolution 1556. Acting under Chapter VII of the Charter, the Council decided that all States shall take the necessary measures to prevent the sale or supply of arms and related materiel and the provision of technical training or assistance thereupon, to all non-governmental entities and individuals, including the Janjaweed, operating in Darfur, by their nationals or from their territories or using their flag vessels or aircraft.

The Council expressed its intention to consider the modification or termination of the measures imposed when it determined that the Government of the Sudan had fulfilled its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates, who have incited and carried out human rights and international humanitarian law violations and other atrocities. It also expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, on the Government in the event of non-compliance.<sup>22</sup>

By its resolution 1564 adopted on 18 September 2004, the Security Council, acting under Chapter VII of the Charter, declared that in the event the Government of the Sudan fails to comply fully with resolution 1556 (2004) or 1564 (2004), including failure to cooperate fully with the expansion and extension of the African Union monitoring mission in Darfur, it shall consider taking additional measures as contemplated in Article 41 of the Charter.

(v) *Côte d'Ivoire*

On 15 November 2004, the Security Council adopted resolution 1572 and, acting under Chapter VII of the Charter, decided that all States shall, for a period of 13 months from the date of adoption of the resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire, from their territories or by their nationals, or using their flag vessels or aircraft, of arms or any related materiel, as well as the provision of any assistance, advice or training related to military activities.

The Security Council further decided that all States shall take the necessary measures, for a period of 12 months, to prevent the entry into or transit through their territories of all persons designated to constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, and any other person determined as responsible for serious violations of human rights and international humanitarian law in Côte d'Ivoire, or who incites publicly hatred and violence, or who is determined to be in violation of measures imposed by the resolution.<sup>23</sup>

<sup>21</sup> S/2004/551.

<sup>22</sup> See also the section below on the Sudan under the heading "Human rights and humanitarian questions considered by the Security Council".

<sup>23</sup> See also the section below on Côte d'Ivoire under the heading "Human rights and humanitarian questions considered by the Security Council".

The Security Council, also decided that all States shall, for the same period of 12 months, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of adoption of the resolution or at any time thereafter, owned or controlled directly or indirectly by the persons or entities designated pursuant to the said resolution. It further decided that all States shall ensure that such resources are prevented from being made available by their nationals or by any persons within their territories, to or for the benefit of such designated persons or entities.

To this end, the Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee, *inter alia*, to designate the individuals and entities subject to the measures imposed by the resolution, to update the list regularly and to seek from all States concerned, information regarding the actions taken by them to implement the resolution. The Committee was requested to present regular reports on its work to the Council, with observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by the said resolution.

Finally, the Security Council decided that the measures imposed by the resolution shall enter into force on 15 December 2004, unless it determines prior to that date that the signatories of the Linas-Marcoussis<sup>24</sup> and Accra III<sup>25</sup> Agreements have implemented all their commitments under the Accra III Agreement and are embarked towards full implementation of the Linas-Marcoussis Agreement.

#### (vi) *Somalia*

In resolution 1558 adopted on 17 August 2004, the Security Council, acting under Chapter VII of the Charter, stressed the obligation of all States to comply fully with the measures imposed by resolution 733 (1992) and requested the Secretary-General to re-establish, in consultation with the Committee established pursuant to resolution 751 (1992),<sup>26</sup> within 30 days from the date of the adoption of the resolution, and for a period of six months, the Monitoring Group referred to in resolution 1519 (2003) with a mandate, *inter alia*, to continue refining and updating information on the draft list of those who continue to violate the arms embargo inside and outside Somalia, and their active supporters, for possible future measures by the Council. The Security Council also expressed its expectation that the Committee will recommend to the Council appropriate measures in response to violations of the arms embargo.

#### (vii) *Sierra Leone*

On 20 September 2004, the Security Council Committee established pursuant to resolution 1132 (1997), revised the list of individuals affected by the travel ban imposed on members of the military junta and adult members of their family.<sup>27</sup>

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<sup>24</sup> S/2003/99.

<sup>25</sup> S/2004/629.

<sup>26</sup> For more information, see the annual report of the Committee, S/2004/1017.

<sup>27</sup> For more information, see the annual report of the Committee, S/2005/44.

(viii) *Iraq*

The Security Council Committee established pursuant to resolution 1518 (2003) continued its work in 2004 and updated on three occasions its list of individuals and entities identified as corporations or agencies of the previous Government of Iraq, or as senior officials of the former Iraqi regime and their immediate family members. The Committee also started discussing de-listing procedures.<sup>28</sup>

(f) **Terrorism**(i) *Threats to international peace and security caused by terrorist acts*

In its resolution 1566 adopted on 8 October 2004, the Security Council, acting under Chapter VII of the Charter, called upon States to cooperate fully in the fight against terrorism in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens for such persons.

The Security Council further called upon all States to become party, as a matter of urgency, to the relevant international conventions and protocols whether or not they are a party to regional conventions on the matter and, it also called upon Member States to cooperate fully on an expedited basis in resolving all outstanding issues with a view to adopting by consensus the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism.

Furthermore, the Council established a working group to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee,<sup>29</sup> including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing of their financial assets, preventing their movement through the territories of Member States, preventing the supply to them of all types of arms and related material, and on the procedures for implementing these measures. It also requested this Working Group to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions and which could consist in part of assets seized from terrorist organizations, their members and sponsors.

(ii) *Counter-Terrorism Committee*

The Security Council Committee established pursuant to resolution 1373 (2001), known as the Counter-Terrorism Committee (CTC),<sup>30</sup> continued in 2004 its efforts to sup-

<sup>28</sup> For more information, see the annual report of the Committee, S/2004/1036.

<sup>29</sup> Established by Security Council resolution 1267 (1999).

<sup>30</sup> For the report of the Chair of the CTC on the problems encountered in the implementation of Security Council resolution 1373 (2001), see S/2004/70.

press and prevent terrorism and initiated a process of revitalization, which culminated with the adoption of Security Council resolution 1535 on 26 March 2004, aimed at strengthening the reach and effectiveness of the Committee. In the resolution, the Council endorsed the report<sup>31</sup> of the Committee on its revitalization and established the Counter-Terrorism Committee Executive Directorate (CTED) as a special political mission under the policy guidance of the CTC Plenary for an initial period ending on 31 December 2007.

In resolution 1566 adopted on 8 October 2004, the Security Council requested the CTC to develop a set of best practices to assist States in implementing the provisions of resolution 1373 (2001) related to the financing of terrorism. The Council directed the CTC, as a matter of priority and, when appropriate, in close cooperation with relevant international, regional and subregional organizations, to start visits to States, with the consent of the States concerned, in order to enhance the monitoring of the implementation of resolution 1373 (2001) and to facilitate the provision of technical and other assistance for such implementation.

**(g) Human rights and humanitarian questions considered  
by the Security Council**

**(i) *The Sudan***

By its resolution 1556 adopted on 30 July 2004, the Security Council, acting under Chapter VII of the Charter, demanded that the Government of the Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requested the Secretary-General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of the Sudan on this matter and expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, on the Government of the Sudan, in the event of non-compliance.

On 18 September 2004, the Security Council, acting under Chapter VII, adopted resolution 1564 in which it reiterated its call for the Government of the Sudan to end the climate of impunity in Darfur by identifying and bringing to justice all those responsible, including members of popular defense forces and Janjaweed militias, for the widespread human rights abuses and violations of international humanitarian law, and insisted that the Government of the Sudan take all appropriate steps to stop all violence and atrocities.

The Council further demanded that the Government of the Sudan submit to the African Union Mission for verification documentation, particularly the names of Janjaweed militiamen disarmed and names of those arrested for human rights abuses and violations of international humanitarian law, with regard to its performance relative to resolution 1556 (2004) and the 8 April 2004 N'Djamena ceasefire agreement.

The Security Council further requested that the Secretary-General rapidly establish an international commission of inquiry<sup>32</sup> in order to immediately investigate reports of viola-

<sup>31</sup> S/2004/124.

<sup>32</sup> For details regarding the establishment of the International Commission of Inquiry, see the letter from the Secretary-General to the President of the Security Council dated 4 October 2004 (S/2004/812). See also Chapter VI A of the present publication, under the section entitled "Miscellaneous".

tions of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.

In its resolution 1574 adopted on 19 November 2004, the Security Council demanded that Government and rebel forces and all other armed groups immediately cease all violence and attacks, refrain from forcible relocation of civilians, cooperate with international humanitarian relief and monitoring efforts, ensure that their members comply with international humanitarian law, facilitate the safety and security of humanitarian staff, and reinforce throughout their ranks their agreements to allow unhindered access and passage by humanitarian agencies and those in their employ, in accordance with its resolution 1502 (2003) on the access of humanitarian workers to populations in need and the Abuja Protocols of 9 November 2004.

(ii) *Burundi*

In a Presidential Statement dated 15 August 2004,<sup>33</sup> the Security Council requested the Special Representative of the Secretary-General for Burundi, in close contact with the Special Representative of the Secretary-General for the Democratic Republic of the Congo, to establish the facts and to report to the Security Council on the massacre of refugees from the Democratic Republic of the Congo at Gatumba, Burundi, on 13 August 2004.

In its resolution 1577, adopted on 1 December 2004, the Security Council noted the joint report of the United Nations Operation in Burundi (ONUB), the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), regarding the massacre.<sup>34</sup>

Acting under Chapter VII of the Charter, the Security Council, *inter alia*, urged all the Governments and parties concerned in the region to denounce the use of and incitement to violence, to condemn unequivocally violations of human rights and of international humanitarian law, and to cooperate with ONUB and MONUC and with efforts of States aimed at ending impunity.

Further, the Security Council called upon the Government of the Democratic Republic of the Congo and of Rwanda to cooperate unreservedly with the Government of Burundi to ensure that the investigation into the Gatumba massacre is completed and that those responsible are brought to justice. The Security Council stated that it was deeply troubled by the fact that Mr. Agathon Rwasa's Forces nationales de libération (Palipehutu-FNL) had claimed responsibility for the Gatumba massacre and expressed its intention to consider appropriate measures that might be taken against those individuals who threaten the peace and national reconciliation process in Burundi.

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<sup>33</sup> S/PRST/2004/30.

<sup>34</sup> S/2004/821.

(iii) *Côte d'Ivoire*

In a Presidential Statement dated 25 May 2004,<sup>35</sup> issued after a meeting of the Security Council on the situation in Côte d'Ivoire, the Council took note, with deep concern, of the report of the commission of inquiry of OHCHR on the events that occurred in Abidjan on 25 and 26 March 2004. In light of these events, the Security Council requested the Secretary-General to establish, as soon as possible, an international commission of inquiry in order to investigate all human rights violations committed in Côte d'Ivoire since 19 September 2002, and determine responsibility.

In a Presidential Statement dated 5 August 2004,<sup>36</sup> the Security Council reiterated its full support to the international commission of inquiry put in place by OHCHR in order to establish the facts and circumstances of the perpetration of violations of human rights and international humanitarian law which occurred in Côte d'Ivoire since 19 September 2002, and, as far as possible, to identify their authors. It recalled that all persons responsible for such violations will be brought to justice. It also encouraged the Ivorian parties to establish without further delay the National Commission for Human Rights provided for by the Linas-Marcoussis Agreement.<sup>37</sup>

The confidential report of the international commission of inquiry was sent to the Secretary-General for presentation to the Security Council in December 2004.<sup>38</sup>

(iv) *Protection of civilians during armed conflict*

In a Presidential Statement<sup>39</sup> dated 14 December 2004, issued after a meeting of the Security Council on the protection of civilians in armed conflict, the Council, *inter alia*, recalled all its relevant resolutions, and in particular resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict.

The Security Council strongly condemned the increased use of sexual and gender-based violence as a weapon of war as well as the recruitment and use of child soldiers by parties to armed conflict in violation of international obligations applicable to them. The Council underlined the vulnerability of women and children in situations of armed conflict, bearing in mind in this regard its resolution 1325 (2000) on women, peace and security, as well as all other resolutions on children and armed conflict, including resolution 1539 (2004), and recognized their special needs, in particular those of the girl child.

Mindful of the particular vulnerability of refugees and internally displaced persons, the Council reaffirmed the primary responsibility of States to ensure their protection, in particular by preserving the civilian character of camps of refugees and internally displaced persons and to take effective measures to protect them from infiltration by armed groups, abduction and forced military recruitment.

<sup>35</sup> S/PRST/2004/17.

<sup>36</sup> S/PRST/2004/29.

<sup>37</sup> S/2003/99.

<sup>38</sup> See the OHCHR annual report for 2004, p. 88.

<sup>39</sup> S/PRST/2004/46. For the report of the Secretary-General of 18 May 2004, see S/2004/431.



Further, the Security Council also reaffirmed its readiness to ensure that peacekeeping missions are given suitable mandates and adequate resources so as to enable them to better protect civilians under imminent threat of physical danger, including by strengthening the ability of the United Nations to plan and rapidly deploy peacekeeping and humanitarian personnel, utilizing the United Nations Stand-by Arrangements System, as appropriate.

(v) *Women and peace and security*

In a Presidential Statement dated 28 October 2004, issued after a meeting on Women and peace and security,<sup>40</sup> the Security Council reaffirmed its commitment to the continuing and full implementation of resolution 1325 (2000), and welcomed the increasing focus on the situation of women and girls in armed conflict since the adoption of the latter resolution. The Security Council also welcomed the report of the Secretary-General on women, peace and security.<sup>41</sup>

The Council requested the Secretary-General to ensure that human rights monitors and members of commissions of inquiry have the necessary expertise and training in gender-based crimes and in the conduct of investigations, including in a culturally sensitive manner favourable to the needs, dignity and rights of the victims. The Council urged all international and national courts specifically established to prosecute war-related crimes to provide gender expertise, gender training for all staff and gender-sensitive programmes for victims and witness protection. The Council also emphasized the urgent need for programmes that provide support to survivors of gender-based violence and requested that appropriate attention is given to the issue of gender-based violence in all future reports to the Council.

### 3. Disarmament and related matters

#### (a) Nuclear disarmament and non-proliferation issues

The Conference on Disarmament,<sup>42</sup> in an effort to avoid the deadlock which has existed since 1998, made it the priority of the Conference to reach an agreement on a programme of work. Nevertheless, despite the efforts by some Member States, the Conference was again unable to adopt a programme of work. Member States addressed the issue of nuclear disarmament in plenary meetings.

The third session of the Preparatory Committee for the 2005 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968,<sup>43</sup> was held in New York in April and May 2004. While the third session was tasked to make every effort to produce a consensus report containing substantive and procedural recommendations to the Review Conference, no agreement on any substantive recommendations, the agenda

<sup>40</sup> S/PRST/2004/40.

<sup>41</sup> S/2004/814.

<sup>42</sup> The Conference on Disarmament, established in 1979 as the single multilateral disarmament negotiating forum of the International Community, was a result of the First Special Session on Disarmament of the United Nations General Assembly in 1978.

<sup>43</sup> United Nations, *Treaty Series*, vol. 729, p. 161.

or background documentation was reached.<sup>44</sup> Throughout the review process, States parties reaffirmed that the NPT rested on three pillars—non-proliferation, disarmament and the peaceful use of nuclear energy. The announcement in 2003 by the Democratic People's Republic of Korea (DPRK) to withdraw from the NPT remained a concern of the international community, with views diverging on its status in relation to the Treaty.

In 2004, the International Atomic Energy Agency (IAEA) carried out verification activities on the implementation of NPT safeguard agreements in the DPRK, the Islamic Republic of Iran and the Libyan Arab Jamahiriya. Since December 2002, the DPRK has not permitted IAEA to carry out verification activities on its territory. With regard to Libya, the Board of the Agency adopted a resolution in March 2004<sup>45</sup> in which it stated that, under article XII.C of the Statute of the IAEA, Libya's past failures to meet the requirements of its NPT safeguards agreement constituted non-compliance and, in accordance with that article, requested the Director General to report the matter to the Security Council for information purposes only. Also in 2004, the IAEA General Conference endorsed the Code of Conduct on the Safety of Research Reactors,<sup>46</sup> which had been adopted by the Board of Governors earlier in the year. The Code provides guidance to States for, *inter alia*, the development and harmonization of policies, laws and regulations on the safety of research reactors.

In the area of ballistic missiles, the Hague Code of Conduct against Ballistic Missile Proliferation (HCOG), 2002,<sup>47</sup> formerly known as "The International Code of Conduct", had 117 subscribing States at the end of 2004. The Subscribing States held their Second Intersessional Meeting in Vienna from 17 to 18 June 2004 where issues such as the implementation of confidence-building measures were discussed. The Third Regular Meeting of Subscribing States was held in New York from 17 to 18 November the same year.

The Secretary-General's High-level Panel on Threats, Challenges and Change, appointed by him in 2003, presented its report entitled "A more secure world: Our shared responsibility",<sup>48</sup> on 2 December 2004. The report stressed the interrelated nature of threats and proposed over 100 recommendations to help the world face the new and evolving threats identified and to strengthen the United Nations. With regard to its recommendations relating to nuclear disarmament and non-proliferation,<sup>49</sup> the High-level Panel, *inter alia*, was of the view that "it would be valuable if the Security Council explicitly pledged to take collective action in response to a nuclear attack or the threat of such attack on a non-nuclear-weapon State." It also recommended that the IAEA Board of Governors "recognize the Model Additional Protocol [to the NPT] as today's standard for IAEA safeguards" and that a "State's notice of withdrawal from the . . . [NPT] should prompt immediate verification of its compliance with the Treaty". If necessary, such verification could be

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<sup>44</sup> For the final report of the Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, see NPT/CONF/2005/1.

<sup>45</sup> For the text of the resolution adopted by the Board on 10 March 2004 entitled "Implementation of the NPT Safeguards Agreement of the Socialist People's Republic of the Libyan Arab Jamahiriya", see IAEA document GOV/2004/18.

<sup>46</sup> GC(48)/7, annex.

<sup>47</sup> For the text of the Hague Code of Conduct, see A/57/724, enclosure.

<sup>48</sup> A/59/565.

<sup>49</sup> *Ibid.*, paras. 117–138.

mandated by the Security Council and, in the event of violations, the Panel held that all assistance provided by IAEA should be withdrawn. The High-level Panel further urged that an arrangement which would enable IAEA to act as a guarantor for the supply of fissile material to civilian nuclear users be concluded and that the Conference on Disarmament negotiate a verifiable cut-off treaty that would end the production of highly enriched uranium for both non-weapon and weapon purposes.

### *General Assembly*

On 3 March 2004, the General Assembly adopted, on the recommendation of the First Committee, 14 resolutions and one decision<sup>50</sup> dealing with nuclear disarmament and non-proliferation issues, of which four are highlighted below.

In its resolution 59/102<sup>51</sup> entitled “Convention on the prohibition of the use of nuclear weapons”, the General Assembly noted with regret that the Conference on Disarmament had been unable to undertake negotiations on this subject and reiterated its request that it commences negotiations in order to reach agreement on such a convention. Furthermore, the General Assembly, in its resolution 59/81,<sup>52</sup> also urged the Conference on Disarmament to agree on a programme of work that includes the immediate commencement of negotiations of a non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.

In its resolution 59/83<sup>53</sup> entitled “Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”, the General Assembly underlined once again the unanimous conclusion of the Court that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. Furthermore, in its resolution 59/77,<sup>54</sup> the Assembly called upon the nuclear-weapon States, pending the achievement of the total elimination of such weapons, to agree on an internationally and legally binding instrument on a joint undertaking not to be the first to use nuclear weapons, and called upon all States to conclude an internationally and legally binding instrument on security assurances of non-use and non-threat of use of nuclear weapons against non-nuclear-weapon States.

### **(b) Biological and chemical weapons issues**

The 2004 Meeting of the States Parties of the Biological Weapons Convention (BWC)<sup>55</sup> was held from 6 to 10 December 2004 in Geneva during which it held a general debate in order

<sup>50</sup> See General Assembly resolutions 59/64, 59/66, 59/67, 59/75, 59/76, 59/77, 59/79, 59/81, 59/83, 59/91, 59/94, 59/102, 59/106 and 59/109 and decision 59/514.

<sup>51</sup> The resolution was adopted by a recorded vote of 125 in favour to 48, with 12 abstentions.

<sup>52</sup> The resolution was adopted by a recorded vote of 179 in favour to 2, with 2 abstentions.

<sup>53</sup> The resolution was adopted by a recorded vote of 132 in favour to 29, with 24 abstentions.

<sup>54</sup> The resolution was adopted by a recorded vote of 117 in favour to 43, with 21 abstentions.

<sup>55</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972. United Nations, *Treaty Series*, vol. 1015, p. 163.

to discuss the following two agenda items: (i) enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease; and (ii) strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants.<sup>56</sup>

The ninth session of the Conference of the States Parties to the Chemical Weapons Convention (CWC)<sup>57</sup> was held from 29 November to 2 December 2004 in Geneva.<sup>58</sup> Membership in the Organization for the Prohibition of Chemical Weapons (OPCW) increased in 2004, from 158 to 167 members. The adoption of Security Council resolution 1540 (2004) relating to the proliferation of weapons of mass destruction and non-State actors (see below), further defined OPCW's contribution to the fight against the global threat posed by terrorism and OPCW cooperated closely with the Committee established pursuant to that resolution during the remainder of the year.

The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established pursuant to Security Council resolution 1284 (1999), continued its work on producing a compendium of Iraq's proscribed weapons and programmes with an emphasis on lessons learned. It is expected that a first complete draft will be ready by March 2005.<sup>59</sup> UNMOVIC also continued to conduct offsite assessments of the status of sites subject to monitoring which were damaged during the war in Iraq. The Security Council, in resolution 1546 adopted on 8 June 2004, reaffirmed its intention to revisit the mandates for UNMOVIC and IAEA with regard to verifications of the disarmament of weapons of mass destruction in Iraq.

### (i) *General Assembly*

Resolutions concerning the Biological Weapons Convention (resolution 59/110) and the Chemical Weapons Convention (resolution 59/72) were adopted, without a vote, by the General Assembly on 3 December 2004. In addition, on the same date, the General Assembly adopted resolution 59/70<sup>60</sup> entitled "Measures to uphold the authority of the 1925 Geneva Protocol", in which it called upon those States that had continued to maintain reservations to the 1925 Geneva Protocol to withdraw them. It further requested the Secretary-General to submit to the General Assembly at its sixty-first session, a report on the implementation of the resolution.

### (ii) *Security Council*

In its resolution 1540 adopted on 28 April 2004, the Security Council, acting under Chapter VII of the Charter, decided that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, trans-

<sup>56</sup> For the report of the Meeting of State Parties, see BWC/MSP/2004.

<sup>57</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992. United Nations, *Treaty Series*, vol. 1974, p. 45.

<sup>58</sup> For the report of the Conference of the States Parties, see OPCW document C-9/6.

<sup>59</sup> For the nineteenth quarterly report on the activities of UNMOVIC, see S/2004/924.

<sup>60</sup> The resolution was adopted by a recorded vote of 179 in favour to none, with 5 abstentions.

port, transfer or use nuclear, chemical or biological weapons and their means of delivery. It also decided that all States shall adopt and enforce appropriate effective laws which prohibit such activities, in particular for terrorist purposes, as well as attempts to engage or participate in them as an accomplice, assist or finance them. The Council further decided that all States shall establish domestic controls to prevent the proliferation of such weapons and their means of delivery.

Furthermore, none of the obligations set forth in the resolution were to be interpreted so as to conflict with or alter the rights and obligations of State parties to the NPT, the Chemical Weapons Convention and the Biological Weapons Convention, or alter the responsibilities of IAEA or OPCW. States were called upon to promote the universal adoption, full implementation and, where necessary, the strengthening of multilateral non-proliferation treaties as well as to adopt necessary national legislation to ensure compliance with their commitments under such key treaties.

By the same resolution the Security Council established, in accordance with rule 28 of its provisional rules of procedure, a Committee which would report to the Council on the implementation of the resolution. To this effect, States were called upon to report to the Committee on steps taken in its implementation.

### (c) Conventional weapons issues

During 2004, the implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,<sup>61</sup> gained further momentum. In its resolution 58/241, adopted on 23 December 2003, the General Assembly had decided to establish an open-ended working group, to meet in three sessions of two weeks each, to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. The Open-ended Working Group held an organizational session in New York on 3 and 4 February 2004, where it decided to hold its substantive sessions in New York from 14 to 25 June 2004, from 24 January to 4 February 2005, and from 6 to 17 June 2005. The first substantive session contained a general exchange of views on the nature of the future international instrument on tracing and a thematic discussion on the three key elements of tracing, namely, marking, record-keeping and international cooperation.<sup>62</sup> It was agreed that the Chairman of the Open-ended Working Group would produce and circulate the first draft of an international instrument before the convening of the second session in 2005.

Regarding the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), 1980,<sup>63</sup> a Meeting of the States Parties to the Convention was held in Geneva on 18 and 19 November 2004. The Meeting considered the report of the Group of Governmental Experts of the States parties to the Convention as

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<sup>61</sup> The Programme was adopted in July 2001; see document A/CONF.192/15, pp. 7–17.

<sup>62</sup> For the report of the Secretary-General on assistance to States for curbing illicit traffic in small arms and collecting them: the illicit trade in small arms and light weapons in all its aspects, see A/59/181.

<sup>63</sup> United Nations, *Treaty Series*, vol. 1341, p. 137.

well as recommendations to consider the issue of possible options to promote compliance with the Convention and its annexed Protocols.<sup>64</sup>

In the area of anti-personnel mines, the First Review Conference of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (Mine-Ban Convention), 1997,<sup>65</sup> was held in Nairobi from 29 November to 3 December 2004. The Conference adopted a final report<sup>66</sup> containing information on the review of the operation and status of the Convention during the period from 1999 to 2004 and the texts of the adopted documents “Nairobi Action Plan 2005–2009” and “Towards a mine-free world: the 2004 Nairobi Declaration”.

Furthermore, the sixth Annual Conference of States Parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II) of 1996,<sup>67</sup> was held in Geneva in November 2004. This year, the Conference received national annual reports from 50 States parties containing material on the dissemination of information on Amended Protocol II to armed forces and civilian populations; mine clearance and rehabilitation programmes; steps taken to meet the technical requirements of the Protocol; legislation related to the Protocol; international cooperation and assistance and other relevant matters. The Conference concluded its work by adopting a final document,<sup>68</sup> as well as an appeal<sup>69</sup> to all States that had not yet done so to take all measures to accede to Amended Protocol II as soon as possible.

#### (i) *General Assembly*

On 3 December 2004, the General Assembly, on the recommendation of the First Committee, adopted seven resolutions and one decision<sup>70</sup> dealing with conventional weapons issues, of which two are highlighted below.

On the item on illicit trade in small arms and light weapons, the General Assembly adopted resolution 59/86<sup>71</sup> in which it requested the Secretary-General, while seeking the views of States, to continue to hold broad-based consultations with all Member States and interested regional and subregional organizations, on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, with a view to establishing a group of governmental experts to consider such further steps. The Secretary-General was requested to report to the General Assembly at its sixtieth session on the outcome of his consultations.

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<sup>64</sup> For the report of the Meeting of the States Parties, see CCW/MSP/2004/2.

<sup>65</sup> United Nations, *Treaty Series*, vol. 2056, p. 211.

<sup>66</sup> APLC/CONF/2004/5.

<sup>67</sup> United Nations, *Treaty Series*, vol. 2048, p. 93.

<sup>68</sup> CCW/AP.II/CONF.6/3.

<sup>69</sup> *Ibid.*, annex II.

<sup>70</sup> General Assembly resolutions 59/74, 59/82, 59/84, 59/86, 59/90, 59/92 and 59/107 and decision 59/515.

<sup>71</sup> The resolution was adopted without a vote.

Furthermore, in its resolution 59/82,<sup>72</sup> the General Assembly also emphasized the importance of including in United Nations-mandated peacekeeping missions, as appropriate and with the consent of the host State, practical disarmament measures aimed at addressing the problem of the illicit trade in small arms and light weapons in conjunction with disarmament, demobilization and reintegration programmes aimed at former combatants, with a view to promoting an integrated comprehensive and effective weapons management strategy that would contribute to a sustainable peace-building process.

(ii) *Security Council*

On 19 January 2004, the Security Council addressed the issue of the illicit trade in small arms and light weapons in an open debate, during which the Secretary-General's report of 31 December 2003<sup>73</sup> was discussed. As a result of the debate, the Council adopted a Presidential Statement<sup>74</sup> by which, among other things, it welcomed General Assembly resolution 58/241 and encouraged arms-exporting countries to exercise the highest degree of responsibility in small arms and light weapons transactions. Also in 2004, the Security Council addressed the issue of small arms and light weapons during its consideration of related issues such as peacekeeping and peace-building missions; the protection of civilians in armed conflict;<sup>75</sup> and women, peace and security.<sup>76</sup>

(d) **Regional disarmament activities of the United Nations**

(i) *Africa*

During the year, the United Nations Regional Centre for Peace and Disarmament in Africa continued to promote the implementation of instruments relating to disarmament, including the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects through regional and subregional frameworks.

(ii) *Latin America and the Caribbean*

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) continued to serve the countries in the region by promoting subregional, regional and cross-regional activities. In addition, the Regional Centre cooperated with the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) and OPCW in assisting States to better understand the obligations and benefits of adhering to those related legal instruments and to improve their national capacity to implement them.

<sup>72</sup> The resolution was adopted without a vote.

<sup>73</sup> S/2003/1217 and Corr.1.

<sup>74</sup> S/PRST/2004/1.

<sup>75</sup> S/PRST/2004/46.

<sup>76</sup> S/PRST/2004/40.

(iii) *Asia and the Pacific*

In 2004, the activities of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific were focused on nuclear-weapon-free zone issues and on the organization of regional conferences and seminars on subjects relating to both nuclear and conventional arms. In this context, the Regional Centre organized meetings for the five Central Asian States<sup>77</sup> to facilitate their negotiations on a Central Asian Nuclear-Weapon-Free Zone (CANWFZ) Treaty.

(iv) *General Assembly*

On 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, nine resolutions and one decision<sup>78</sup> dealing with regional disarmament, of which two are highlighted below.

In its resolution 59/88,<sup>79</sup> the General Assembly requested the Conference on Disarmament to consider the formulation of principles that can serve as a framework for regional agreements on conventional arms control. Furthermore, in resolution 59/89,<sup>80</sup> it also affirmed that global and regional approaches to disarmament complement each other and should therefore be pursued simultaneously to promote regional and international peace and security and called upon States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at the regional and subregional levels.

(e) *Other issues*(i) *Terrorism and disarmament*a. *General Assembly*

In the area of terrorism and disarmament, on 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/80<sup>81</sup> on “Measures to prevent terrorists from acquiring weapons of mass destruction”. The Assembly requested the Secretary-General to compile a report on measures already taken by international organizations on issues relating to the linkage between the fight against terrorism and the proliferation of weapons of mass destruction, to seek the views of Member States on additional relevant measures for tackling the global threat posed by the acquisition by terrorists of such weapons, and to report to the General Assembly at its sixtieth session.

<sup>77</sup> Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

<sup>78</sup> General Assembly resolutions 59/59, 59/63, 59/73, 59/85, 59/87, 59/88, 59/89, 59/96 and 59/108 and decision 59/513.

<sup>79</sup> The resolution was adopted by a recorded vote of 178 in favour to 1, with 1 abstention.

<sup>80</sup> The resolution was adopted without a vote.

<sup>81</sup> The resolution was adopted without a vote.



## b. Security Council

On 28 April 2004, the Security Council adopted, under Chapter VII, resolution 1540 on the non-proliferation of nuclear, chemical, or biological weapons and their means of delivery with regard to non-State actors (see above).

### (ii) *Outer Space*

In light of the fact that the Conference on Disarmament did not reach an agreement on a programme of work in 2004, no subsidiary body was established to deal with the issue of the prevention of an arms race in outer space (PAROS). Nevertheless, following an agreement reached by Member States, one plenary meeting was dedicated to an exchange of views on the issue. At that meeting, China and the Russian Federation circulated two jointly prepared informal papers entitled “Verification aspects of PAROS” and “Existing international legal instruments and prevention of the weaponization of outer space”.<sup>82</sup>

### General Assembly

On 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/65<sup>83</sup> entitled “Prevention of an arms race in outer space”. The resolution called upon all States, in particular those with major space capabilities, to actively contribute to the objective of the peaceful use of outer space and of the prevention of an arms race in outer space and to refrain from actions contrary to that objective and to the relevant existing treaties in the interest of maintaining international peace and security and promoting international cooperation.

### (iii) *Multilateralism and disarmament*

In its resolution 59/69,<sup>84</sup> adopted on 3 December 2004 on the recommendation of the First Committee, the General Assembly reaffirmed multilateralism as the core principle in negotiations in the area of disarmament and non-proliferation and urged the participation of all interested States in such multilateral negotiations in a non-discriminatory and transparent manner. It also took note of the Secretary-General’s report entitled “Promotion of multilateralism in the area of disarmament and non-proliferation”,<sup>85</sup> which contained the views of the Member States on this subject.

### (iv) *Environmental norms and disarmament agreements*

Also on 3 December 2004, the General Assembly adopted, on the recommendation of the First Committee, resolution 59/68,<sup>86</sup> in which it reaffirmed that international dis-

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<sup>82</sup> For the Final Record of the 966th Plenary Meeting of the Conference on Disarmament, see CD/PV.966.

<sup>83</sup> The resolution was adopted by a recorded vote of 178 in favour to none, with 4 abstentions.

<sup>84</sup> The resolution was adopted by a recorded vote of 178 in favour to none, with 4 abstentions.

<sup>85</sup> A/59/128 and Add.1.

<sup>86</sup> The resolution was adopted by a recorded vote of 175 in favour to 2, with 3 abstentions.

armament forums should take fully into account the relevant environmental norms in negotiating disarmament and arms limitation treaties and agreements.

#### 4. Legal aspects of peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its forty-third session in Vienna from 29 March to 8 April 2004.<sup>87</sup>

During the session, in the context of its consideration of the item on the status and application of the five United Nations treaties on outer space,<sup>88</sup> the Subcommittee was informed by the Chairman of the related Working Group that agreement had been reached on a draft resolution on the application of the concept of the “launching State”, for consideration by the General Assembly.<sup>89</sup> The Subcommittee noted the status of the five United Nations treaties on outer space and endorsed the report of the Working Group as well as the recommendation that the mandate of the Working Group be extended for one additional year.

In connection with the item relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit,<sup>90</sup> the Subcommittee had before it, among other things, a questionnaire prepared by the Secretariat on possible legal issues with regard to aerospace objects<sup>91</sup> and an analytical summary of the replies of States thereto.<sup>92</sup> The Subcommittee reconvened the Working Group on this item to consider only matters relating to the definition and delimitation of outer space, in accordance with the agreement reached at its thirty-ninth session and, subsequently, endorsed the Working Group’s report.<sup>93</sup>

Regarding the agenda item entitled “Examination of the preliminary draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment (opened for signature at Cape Town on 16 November 2001)” the Legal Subcommittee considered two sub-items: “(a) Considerations relating to the possibility of the United Nations serving as supervisory authority under the preliminary draft protocol”;

<sup>87</sup> For the report of the Legal Subcommittee, see A/AC.105/826.

<sup>88</sup> The treaties include: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 1967 (General Assembly resolution 222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1968 (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects, 1972 (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space, 1975 (United Nations, *Treaty Series*, vol. 1023, p. 15) and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (United Nations, *Treaty Series*, vol. 1363, p. 3).

<sup>89</sup> A/AC.105/826, annex I, appendix II.

<sup>90</sup> The item is entitled “Matters relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union”.

<sup>91</sup> A/AC.105/635/Add.10.

<sup>92</sup> A/AC.105/C.2/L.249 and Corr.1.

<sup>93</sup> A/AC.105/826, annex II.

and “(b) Considerations relating to the relationship between the terms of the preliminary draft protocol and the rights and obligations of States under the legal regime applicable to outer space”. The Subcommittee had before it two documents: (a) the report of the Secretariat on the Convention on International Interests in Mobile Equipment<sup>94</sup> and its preliminary draft protocol on matters specific to space assets: considerations relating to the possibility of the United Nations serving as a supervisory authority under the protocol;<sup>95</sup> and (b) the preliminary draft protocol to the Convention on International Interests in Mobile Equipment on matters specific to space assets, as amended by the Unidroit Committee of Governmental Experts.<sup>96</sup> The Legal Subcommittee reconvened its Working Group under this item, which agreed to continue, inter-session, its consideration of the question of the appropriateness of the United Nations acting as supervisory authority in an open-ended *ad hoc* working group, with a view to preparing a report, including the text of a draft resolution, to be submitted to the Subcommittee at its forty-fourth session, in 2005.<sup>97</sup>

The Legal Subcommittee also considered two new agenda items entitled “Contributions by the Legal Subcommittee to the Committee on the Peaceful Uses of Outer Space for the preparation of its report to the General Assembly for its review of the progress made in the implementation of the recommendations of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III)” and “Practice of States and international organizations in registering space objects”.

The Committee on the Peaceful Uses of Outer Space held its forty-seventh session in Vienna from 2 to 11 June 2004. The Committee took note of the Legal Subcommittee’s report and a number of views were expressed concerning the work of the Subcommittee.<sup>98</sup>

### *General Assembly*

The General Assembly adopted two resolutions relating to the topic legal aspects of peaceful uses of outer space, namely, resolution 59/116 on the “International Cooperation and the peaceful use of outer space”, in which it endorsed the report of the Committee on the Peaceful Uses of Outer Space, and resolution 59/65 on the “Prevention of an arms race in outer space”.

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<sup>94</sup> DCME Doc. No. 74 International Civil Aviation Organization.

<sup>95</sup> A/AC.105/C.2/L.238.

<sup>96</sup> A/AC.105/C.2/2004/CRP.5.

<sup>97</sup> A/AC.105/826, annex III.

<sup>98</sup> For the report of the Committee on the Peaceful Uses of Outer Space, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 20 (A/59/20)*.

## 5. Human rights<sup>99</sup>

### (a) Sessions of the United Nations human rights bodies and treaty bodies

#### (i) *Commission on Human Rights*

The United Nations Commission on Human Rights was established in 1946 by the Economic and Social Council during its first session<sup>100</sup> to submit proposals, recommendations and reports to the Council regarding certain defined human rights areas, including on an international bill of rights, the status of women, freedom of information, the protection of minorities and the prevention of discrimination on grounds of race, sex, language or religion. At its second session<sup>101</sup> the mandate of the Commission was expanded to include any other matter concerning human rights not covered in the previous resolution. Its mandate expanded further over time allowing the Commission to respond to the whole range of human rights problems and to set standards to govern the conduct of States. The Commission held its sixtieth session from 15 March to 23 April 2004 in Geneva.<sup>102</sup>

#### (ii) *Sub-Commission for the Promotion and Protection of Human Rights*

The Sub-Commission for the Promotion and Protection of Human Rights was established by the Commission of Human Rights as its main subsidiary body during the first session of the Commission in 1947, and under the authority of the Economic and Social Council.<sup>103</sup> The Sub-Commission held its fifty-sixth session from 26 July to 13 August 2004 in Geneva.<sup>104</sup>

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<sup>99</sup> This section covers the resolutions adopted, if any, by the Security Council, the General Assembly and the Economic and Social Council. Other legal developments in human rights may be found under the sections in the present chapter entitled "Peace and security" and "Women and children". The present section does not cover resolutions addressing human rights issues arising in particular States, nor does it cover in detail the legal activities of the Commission on Human Rights, the Sub-Commission for the Promotion and Protection of Human Rights, or the treaty bodies (namely, the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture, Committee on the Rights of the Child and the Committee on Migrant Workers). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at [www.ohchr.org](http://www.ohchr.org). For a complete list of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV.

<sup>100</sup> Economic and Social Council resolution adopted on 16 February 1946 (E/20).

<sup>101</sup> Economic and Social Council resolution adopted on 21 June 1946 (E/56/Rev.1 and E/84, para. 4).

<sup>102</sup> The report can be found in *Official Records of the Economic and Social Council 2004, Supplement No. 3* (E/2004/23).

<sup>103</sup> Economic and Social Council resolution 46 (IV) of 28 March 1947 (E/325).

<sup>104</sup> The report can be found in document E/CN.4/2005/2–E/CN.4/Sub.2/2004/48.

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights, 1966,<sup>105</sup> to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2004, the Committee held its eightieth session from 16 March to 3 April in New York, and its eighty-first and eighty-second sessions from 12 to 30 July and from 18 October to 5 November, respectively, in Geneva.<sup>106</sup>

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council<sup>107</sup> to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights, 1966,<sup>108</sup> by its States parties. In 2004, the Committee held its thirty-second and thirty-third sessions from 26 April to 14 May and from 8 to 26 November respectively, in Geneva.<sup>109</sup>

(v) *Committee on the Elimination of Racial Discrimination*

The Committee on the Elimination of Racial Discrimination was established under the Convention on the Elimination of All Forms of Racial Discrimination, 1966,<sup>110</sup> to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its sixty-fourth and sixty-fifth sessions from 23 February to 12 March and from 2 to 20 August 2004 in Geneva.<sup>111</sup>

(vi) *Committee on the Elimination of Discrimination against Women*

The Committee on the Elimination of Discrimination against Women was established under the Convention on the Elimination of All Forms of Discrimination against Women, 1979,<sup>112</sup> to monitor the implementation of this Convention by its States parties. In

<sup>105</sup> United Nations, *Treaty Series*, vol. 999, p. 171.

<sup>106</sup> The reports of the eighty and eighty-first sessions can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40 (A/59/40)* and the report of the eighty-second session can be found in *Official Records of the General Assembly, Sixtieth Session, Supplement No. 40 (A/60/40)*.

<sup>107</sup> Economic and Social Council resolution 1985/17 of 28 May 1985.

<sup>108</sup> United Nations, *Treaty Series*, vol. 993, p. 3.

<sup>109</sup> The reports of the sessions can be found in *Official Records of the Economic and Social Council, 2005, Supplement No. 2 (E/2005/22- E/C.12/2004/9)*.

<sup>110</sup> United Nations, *Treaty Series*, vol. 660, p. 195.

<sup>111</sup> The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18 (A/59/18)*.

<sup>112</sup> United Nations, *Treaty Series*, vol. 1249, p. 13.

2004, the Committee held its thirtieth and thirty-first sessions from 12 to 30 January and from 6 to 23 July respectively, in New York.<sup>113</sup>

(vii) *Committee against Torture*

The Committee against Torture was established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,<sup>114</sup> to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its thirty-second and thirty-third sessions from 3 to 31 May and from 16 to 26 May in Geneva.<sup>115</sup>

(viii) *Committee on the Rights of the Child*

The Committee on the Rights of the Child was established under the Convention on the Rights of the Child, 1989,<sup>116</sup> to monitor the implementation of this Convention by its States parties. In 2004, the Committee held its thirty-fifth, thirty-sixth and thirty-seventh sessions in Geneva, from 12 January to 7 February, from 17 May to 11 June, and from 13 September to 8 October, respectively.<sup>117</sup>

(ix) *Committee on Migrant Workers*

The Committee on Migrant Workers was established under the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,<sup>118</sup> to monitor the implementation of this Convention by its States parties in their territories. The Committee held its first session from 1 to 5 March 2004 in Geneva.<sup>119</sup>

**(b) Human rights issues in general**

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following resolutions.

(a) In resolution 59/192<sup>120</sup> entitled “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Rec-

<sup>113</sup> The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 38 (A/59/38)*.

<sup>114</sup> United Nations, *Treaty Series*, vol. 1465, p. 85.

<sup>115</sup> The respective reports can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44)* and *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44 (A/60/44)*.

<sup>116</sup> United Nations, *Treaty Series*, vol. 1577, p. 3.

<sup>117</sup> The reports can be found respectively in documents CRC/C/133, CRC/C/137 and CRC/C/140.

<sup>118</sup> General Assembly resolution 45/158 of 18 December 1990.

<sup>119</sup> The report can be found in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 48 (A/59/48)*.

<sup>120</sup> The resolution was adopted without a vote.

ognized Human Rights and Fundamental Freedoms” the General Assembly noted the reports of the Special Representative of the Secretary-General on the situation of human rights defenders.<sup>121</sup> The Assembly also called upon all States to ensure, protect and respect the freedom of expression and association of human rights defenders and, where registration is required, to facilitate registration, including through the establishment of effective and transparent criteria and non-discriminatory procedures under domestic law. It also emphasized the importance of combating impunity and, in this regard, urged States to take appropriate measures to address the question of impunity for threats, attacks and acts of intimidation against human rights defenders. Further, the General Assembly encouraged States to promote awareness and training in regard to the Declaration<sup>122</sup> in order to enable officials, agencies, authorities and the judiciary to observe its provisions and thus to promote better understanding and respect for human rights defenders.

(b) In resolution 59/190<sup>123</sup> entitled “Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance on non-selectivity, impartiality and objectivity”, the General Assembly reaffirmed that the promotion, protection and full realization of all human rights and fundamental freedoms, as a legitimate concern of the world community, should be guided by the principles of non-selectivity, impartiality and objectivity and should not be used for political ends. It further requested all human rights bodies within the United Nations system, as well as the special rapporteurs and representatives, independent experts and working groups, to take duly into account the contents of the resolution in carrying out their mandates.

On the same date, the General Assembly also adopted resolutions relating to the globalization and its impact on the full enjoyment of all human rights (59/184), the promotion of a democratic and equitable international order (59/193), and the question of human rights and unilateral coercive measures (59/188).

On 23 December 2004, the General Assembly further adopted, on the recommendation of the Third Committee, resolution 59/204<sup>124</sup> entitled “Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character”. The Assembly also called upon Member States to refrain from enacting or enforcing unilateral coercive measures as tools of political, military or economic pressure against any country, in particular against developing countries, which would prevent those countries from exercising their right to decide of their own free will their own political, economic and social systems.

In addition, on the same date, the General Assembly also adopted, on the recommendation of the Third Committee, resolution 59/196<sup>125</sup> on “Regional arrangements for

<sup>121</sup> E/CN.4/2001/94, E/CN.4/2002/106 and Add.1 and 2, E/CN.4/2003/104 and Add.1–4 and E/CN.4/2004/94 and Add.1–3; see also A/56/341, A/57/182, A/58/380 and A/59/401.

<sup>122</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 of 9 December 1998.

<sup>123</sup> The resolution was adopted without a vote.

<sup>124</sup> The resolution was adopted by a recorded vote of 118 in favour to 55, with 13 abstentions.

<sup>125</sup> The resolution was adopted without a vote.

the promotion and protection of human rights”, in which it invited States in areas in which regional arrangements in the field of human rights do not yet exist to consider concluding such arrangements with a view to establishing suitable regional machinery for the promotion and protection of human rights.

### (c) Human rights treaty bodies

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/181<sup>126</sup> on “Equitable geographical distribution in the membership of the human rights treaty bodies”. In this resolution, the General Assembly encouraged the States parties to the United Nations human rights instruments to adopt concrete actions to ensure the objective of equitable geographical distribution in their memberships, *inter alia*, through the possible establishment of quota distribution systems by geographical region. Furthermore, the Assembly called upon the States parties to such instruments to include, as an agenda item at their forthcoming meetings, a debate on this issue, based on the recommendations of the Commission on Human Rights and the Economic and Social Council and the provisions of the resolution.

The General Assembly also recommended when considering the possible establishment of such quota distribution systems, the introduction of flexible procedures that encompassed the following criteria: (a) each of the five regional groups established by the General Assembly must be assigned a quota of the membership of each treaty body in equivalent proportion to the number of States parties to the instrument that it represents; (b) there must be provision for periodic revisions that reflect the relative changes in the geographical distribution of States parties; and (c) automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised.

The Assembly further stressed that the process needed to achieve the goal of equitable geographical distribution in the membership could contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies shall be elected and shall serve in their personal capacity, and shall be of high moral character, acknowledged impartiality and recognized competence in the field of human rights.

### (d) Migrants and migrant workers

Concerning migrants and migrant workers, the General Assembly adopted on 20 December 2004, on the recommendation of the Third Committee, resolution 59/194<sup>127</sup> entitled “Protection of migrants”.

In this resolution, the General Assembly took note of the report of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants<sup>128</sup> and the Judgment of the International Court of Justice of 31 March 2004 in the case concerning

<sup>126</sup> The resolution was adopted by a recorded vote of 128 in favour to 52, with 4 abstentions.

<sup>127</sup> The resolution was adopted without a vote.

<sup>128</sup> E/CN.4/2002/76 and Add.1–4.



*Avena and Other Mexican Nationals*.<sup>129</sup> It reaffirmed emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations of 1963,<sup>130</sup> in particular with regard to the right of all foreign nationals to communicate with a consular official of the sending State in the case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform without delay the foreign national of his or her rights under the Convention.

On 23 December 2004, the General Assembly further adopted, on the recommendation of the Third Committee, resolution 59/262<sup>131</sup> entitled “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.”<sup>132</sup> The General Assembly welcomed the establishment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the report on its first session, held in Geneva from 1 to 5 March 2004,<sup>133</sup> and took note of the rules of procedure adopted by the Committee.<sup>134</sup>

### (e) Right to travel

On 23 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/203<sup>135</sup> on “Respect for the right to universal freedom of travel and the vital importance of family reunification”, in which it called upon all States to guarantee the universally recognized freedom of travel to all foreign nationals legally residing in their territory. It also reaffirmed that all Governments, in particular those of receiving countries, must recognize the vital importance of family reunification and promote its incorporation into national legislation in order to ensure protection of the unity of families of documented migrants; called upon all States to allow, in conformity with international legislation, the free flow of financial remittances by foreign nationals residing in their territory to relatives in the country of origin; and also called upon all States to refrain from enacting, and to repeal if it already exists, legislation intended as a coercive measure that discriminates against individuals or groups of legal migrants by adversely affecting family reunification and the right to send financial remittances to relatives in the country of origin.

### (f) Right to food

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/202<sup>136</sup> on “The right to food”, in which it took note of the interim report of the Special Rapporteur of the Commission on Human Rights on the

<sup>129</sup> See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4 (A/59/4)*, chap. V, sect. A. 23. See also *I.C.J. Reports 2004*, p. 12.

<sup>130</sup> United Nations, *Treaty Series*, vol. 596, p. 261.

<sup>131</sup> The resolution was adopted without a vote.

<sup>132</sup> United Nations, *Treaty Series*, vol. 2220, p. 93.

<sup>133</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 48 (A/59/48)*.

<sup>134</sup> *Ibid.*, annex IV.

<sup>135</sup> The resolution was adopted by a recorded vote of 122 in favour to 3, with 61 abstentions.

<sup>136</sup> The resolution was adopted by a recorded vote of 182 in favour to 3, with no abstentions.

right to food.<sup>137</sup> The Assembly encouraged all States to take steps with a view to achieving progressively the full realization of the right to food, including steps to promote the conditions for everyone to be free from hunger and, as soon as possible, to enjoy fully the right to food, and to create and adopt national plans to combat hunger. It further encouraged all States to take action to address discrimination against women, particularly where it contributes to the malnutrition of women and girls, including measures to ensure the realization of the right to food and that women have equal access to resources, including income, land and water, to enable them to feed themselves.

Furthermore, the General Assembly welcomed the adoption by the Intergovernmental Working Group, as mandated by the Council of the Food and Agriculture Organization of the United Nations, of a set of voluntary guidelines<sup>138</sup> to support the progressive realization of the right to adequate food in the context of national food security, as well as the endorsement by the Committee on World Food Security of the voluntary guidelines as submitted and its decision to transmit them to the Council for final adoption and, in this regard, encouraged States members of the Council to adopt the voluntary guidelines.

### (g) Enforced or involuntary disappearances

The General Assembly, on 20 December 2004, adopted on the recommendation of the Third Committee, resolution 59/200<sup>139</sup> entitled “Question of enforced or involuntary disappearances”. In the said resolution, the Assembly took note of the report of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights,<sup>140</sup> and the note of the Secretary-General concerning the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.<sup>141</sup>

The General Assembly also urged all Governments to take appropriate legislative or other steps to prevent and suppress the practice of enforced disappearances in keeping with the Declaration, and to take action to that end at the national and regional levels and in cooperation with the United Nations, including through the provision of technical assistance. It further called upon Governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is ensured, in particular with regard to the prevention of enforced disappearances.

Furthermore, the General Assembly urged the Governments concerned: (a) to take steps to protect witnesses of enforced disappearances, human rights defenders acting against enforced disappearances, and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they may be subjected; (b) to continue their efforts to elucidate the fate of disappeared persons; and (c) to make provision in their legal systems for machinery for victims of enforced or involuntary disappearances or their families to seek fair and adequate reparation.

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<sup>137</sup> A/59/385.

<sup>138</sup> Report of the 30th Session of the Committee on World Food Security (CFS) Rome, 20–23 September 2004, FAO document CL 127/10-Sup.1, annex 1.

<sup>139</sup> The resolution was adopted without a vote.

<sup>140</sup> E/CN.4/2004/58.

<sup>141</sup> General Assembly resolution 47/133 of 18 December 1992. For the note of the Secretary-General, see A/59/341.

### (h) Religious intolerance

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/199<sup>142</sup> entitled “Elimination of all forms of religious intolerance”, in which it took note of the interim report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief.<sup>143</sup>

In this resolution, the Assembly urged States to ensure that their constitutional and legal systems provide effective guarantees of freedom of thought, conscience, religion or belief, including the provision of effective remedies in cases where these rights are violated. It also urged States to ensure that no one within their jurisdiction is, because of their religion or belief, deprived of the right to life, liberty and security of person, the right to freedom of expression, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the right not to be arbitrarily arrested or detained, and to protect their physical integrity and bring to justice all perpetrators of violations of these rights.

Furthermore, the General Assembly also urged States, in conformity with international standards of human rights, to take all necessary action to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to persons belonging to religious minorities; and called upon all States to recognize, as provided for in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,<sup>144</sup> the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for those purposes.

### (i) Extrajudicial, summary or arbitrary executions

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/197<sup>145</sup> entitled “Extrajudicial, summary or arbitrary executions”, in which it took note of the interim report of the Special Rapporteur to the General Assembly.<sup>146</sup>

In addition, the Assembly demanded that all Governments ensure that the practice of extrajudicial, summary or arbitrary executions is brought to an end and that they take effective action to combat and eliminate the phenomenon in all its forms. It reiterated the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families, and to adopt all necessary measures, including legal and judicial measures, to put an end to impunity and to prevent the further occurrence of such executions.

<sup>142</sup> The resolution was adopted by a recorded vote of 188 in favour to none, with no abstentions.

<sup>143</sup> A/59/366.

<sup>144</sup> General Assembly resolution 36/55 of 25 November 1981.

<sup>145</sup> The resolution was adopted by a recorded vote of 142 in favour to none, with 43 abstentions.

<sup>146</sup> A/59/319.

The General Assembly further called upon all States in which the death penalty has not been abolished to comply with their obligations under relevant provisions of international human rights instruments, including in particular articles 6, 7 and 14 of the International Covenant on Civil and Political Rights, 1966,<sup>147</sup> and articles 37 and 40 of the Convention on the Rights of the Child, 1989,<sup>148</sup> bearing in mind the safeguards and guarantees set out in Economic and Social Council resolutions 1984/50 and 1989/64.

Furthermore, the General Assembly urged all Governments: (a) to take all necessary measures to prevent the occurrence of extrajudicial, summary or arbitrary executions, including those occurring in custody; (b) to take all necessary and possible measures, in conformity with international human rights law and international humanitarian law, to prevent loss of life, in particular that of children, during public demonstrations, internal and communal violence, civil unrest and public emergencies or armed conflicts, and to ensure that the police, law enforcement agents and security forces act with restraint and in conformity with international human rights law and international humanitarian law; and (c) to ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, and to bring those responsible to justice before a competent, independent and impartial judiciary and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by State officials or personnel.

### (j) Terrorism and human rights<sup>149</sup>

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following two resolutions relating to terrorism and human rights.

(a) In its resolution 59/195<sup>150</sup> on “Human rights and terrorism”, the General Assembly took note of the final report of the Special Rapporteur of the Sub-Commission on Terrorism and human rights<sup>151</sup> and rejected the identification of terrorism with any religion, nationality or culture. It also called upon States to take appropriate measures, in conformity with relevant provisions of national and international law, including international human rights standards, before granting refugee status, for the purpose of ensuring that an asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts, including assassinations, and to ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

In addition, the General Assembly urged States and the Office of the United Nations High Commissioner for Refugees to review, with full respect for legal safeguards, the valid-

<sup>147</sup> United Nations, *Treaty Series*, vol. 999, p. 171.

<sup>148</sup> United Nations, *Treaty Series*, vol. 1577, p. 3.

<sup>149</sup> Other legal developments relating to terrorism may be found under the sections entitled “Peace and security” and “Legal Questions dealt with by the Sixth Committee and other Committees of the General Assembly”.

<sup>150</sup> The resolution was adopted by a recorded vote of 127 in favour to 50, with 8 abstentions.

<sup>151</sup> E/CN.4/Sub.2/2004/40.

ity of a refugee status decision in an individual case if credible and relevant evidence comes to light which indicates that the person in question has planned, facilitated or participated in the commission of terrorist acts.

(b) In its resolution 59/191<sup>152</sup> entitled “Protection of human rights and fundamental freedoms while countering terrorism”, the General Assembly noted the study of the United Nations High Commissioner for Human rights<sup>153</sup> on this subject and welcomed the report of the Secretary-General, both of which were submitted pursuant to resolution 58/187.<sup>154</sup>

In this resolution, the General Assembly reaffirmed the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights, 1966,<sup>155</sup> to respect certain rights as non-derogable in any circumstances. It further recalled, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlined the exceptional and temporary nature of any such derogation.<sup>156</sup> It called upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism.

Further, in the said resolution, the General Assembly noted with appreciation the appointment of an independent expert on the protection of human rights and fundamental freedoms while countering terrorism pursuant to Commission on Human Rights resolution 2004/87,<sup>157</sup> and encouraged States to cooperate fully with him.

### (k) Missing persons

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/189<sup>158</sup> on “Missing persons”. In the said resolution, the Assembly urged States strictly to observe and respect the rules of international humanitarian law, as set out in the Geneva Conventions, 1949,<sup>159</sup> and in the Additional Protocols<sup>160</sup> thereto, and called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with the armed conflict and to account for persons reported missing as a result of such a situation.

Further, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children. It also invited States which are parties

<sup>152</sup> The resolution was adopted without a vote.

<sup>153</sup> For the report entitled “Protection of human rights and fundamental freedoms while countering terrorism”, see A/59/428.

<sup>154</sup> A/59/404.

<sup>155</sup> United Nations, *Treaty Series*, vol. 999, p. 171.

<sup>156</sup> See General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

<sup>157</sup> *Official Records of the Economic and Social Council, 2004, Supplement No. 3 (E/2004/23)*, chap. II, sect. A.

<sup>158</sup> The resolution was adopted without a vote.

<sup>159</sup> United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135, and 287.

<sup>160</sup> United Nations, *Treaty Series*, vol. 1125, pp. 3 and 609.

to an armed conflict to cooperate fully with the International Committee of the Red Cross in establishing the fate of missing persons and to adopt a comprehensive approach to this issue, including all practical and coordination mechanisms that may be necessary, based on humanitarian considerations only, and urged States and encouraged intergovernmental and non-governmental organizations to take all necessary measures at the national, regional and international levels to address this problem and to provide appropriate assistance as requested by the States concerned. In addition, the General Assembly invited relevant human rights mechanisms and procedures, as appropriate, to address the problem of persons reported missing in connection with armed conflicts in their forthcoming reports to the General Assembly.

### **(1) Torture and other cruel, inhuman or degrading treatment or punishment**

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/182<sup>161</sup> on “Torture and other cruel, inhuman or degrading treatment or punishment”. In this resolution, the General Assembly welcomed the report of the Committee against Torture,<sup>162</sup> and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.<sup>163</sup>

The General Assembly recalled that a number of courts have recognized that the prohibition of torture is a peremptory norm of international law. It called upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and condemned, in particular, any action or attempt by States or public officials to legalize or authorize torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions.

Additionally, the General Assembly stressed that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and took note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)<sup>164</sup> as a useful tool in efforts to combat torture.

The General Assembly stressed also that all acts of torture must be made offences under domestic criminal law, and emphasized that acts of torture are serious violations of international humanitarian law and can constitute crimes against humanity and war crimes and that the perpetrators of such acts must be prosecuted and punished. It urged States to ensure that any statement that is established to have been made as a result of tor-

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<sup>161</sup> The resolution was adopted without a vote.

<sup>162</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44).*

<sup>163</sup> A/59/324.

<sup>164</sup> General Assembly resolution 55/89, annex.

ture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The Assembly further stressed that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment.

Furthermore, the Assembly recalled that States shall not expel, return (*“refouler”*) or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture; and stressed that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation. It urged Governments to take effective measures to this end and, in this regard, encouraged the development of rehabilitation centres.

### **(m) Right to self-determination**

With regard to the right to self-determination, on 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee the following resolutions.

(a) Resolution 59/180<sup>165</sup> on “Universal realization of the right of peoples to self-determination”, in which the General Assembly took note of the report of the Secretary General on this item.<sup>166</sup>

(b) Resolution 49/178<sup>167</sup> entitled “Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”. In this resolution, the Assembly requested the new Special Rapporteur to circulate to States and consult with them on the new proposal for a legal definition of a mercenary drafted by the former Special Rapporteur<sup>168</sup> and to report her findings to the Commission on Human Rights and the General Assembly.

### **(n) Racism, racial discrimination, xenophobia and related intolerance**

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/177<sup>169</sup> on “Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action”. In this resolution, the General Assembly endorsed the concern expressed by the Commis-

<sup>165</sup> The resolution was adopted without a vote.

<sup>166</sup> A/59/376.

<sup>167</sup> The resolution was adopted by recorded vote of 129 in favour to 46, with 13 abstentions.

<sup>168</sup> See E/CN.4/2004/15, para. 47.

<sup>169</sup> The resolution was adopted by a recorded vote of 183 in favour to 3, with 2 abstentions.

sion on Human Rights in its resolution 2004/88<sup>170</sup> to the effect that, at the current pace, with 170 ratifications and only 45 declarations, the deadline of 2005 for universal ratification decided by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will, regrettably not be realized.

Further, the General Assembly condemned the resurgence of xenophobia, and underlined the fact that, while anchoring human rights in legal instruments is a fundamental way of expressing their universality, it is no longer capable of eliminating the underlying causes of discriminatory culture and mentalities, and that action on human rights must henceforth include discussion of the deep cultural roots of racism. The Assembly noted the recommendations contained in the interim report of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.<sup>171</sup>

On the same date and on the recommendation of the Third Committee, the Assembly also adopted resolutions 59/176 entitled "International Convention on the Elimination of All Forms of Racial Discrimination" and resolution 59/175 entitled "Measures to be taken against political platforms and activities based on doctrines of superiority and violent nationalist ideologies which are based on racial discrimination or ethnic exclusiveness and xenophobia, including neo-Nazism". In the latter resolution, the General Assembly noted the recommendations of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, including the need for States to exercise greater control over racist and xenophobic statements, especially when they are expressed by representatives of political parties or other ideological movements.<sup>172</sup> In this regard, it emphasized that measures taken to combat racism must be in accordance with the commitments they have undertaken under the Durban Declaration and Programme of Action<sup>173</sup> and with international standards of freedom of expression.

In addition, the General Assembly also urged States to take certain steps, including appropriate measures to condemn all propaganda and all organizations which are based on ideas and theories of superiority.

### (o) Rights and dignity of persons with disabilities

During 2004, the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities<sup>174</sup> held its fourth session from 23 August to 3 September 2004. In its report,<sup>175</sup> the Ad Hoc Committee recommended that it continue its work in 2005.

<sup>170</sup> *Official Records of the Economic and Social Council, 2004, Supplement No. 3 (E/2004/23)*, chap. II, sect. A.

<sup>171</sup> A/59/329.

<sup>172</sup> A/59/330.

<sup>173</sup> A/CONF.189/12 and Corr.1, chap. I.

<sup>174</sup> Established by General Assembly resolution 56/168 of 19 December 2001.

<sup>175</sup> A/59/360.



On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/198<sup>176</sup> entitled “Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities”. In this resolution, the Assembly invited Member States and observers to continue to participate actively and constructively in the Ad Hoc Committee with a view to the early conclusion of a draft text of a convention, in order to present it to the General Assembly, as a matter of priority, for its adoption.

### **(p) Genetic privacy and non-discrimination**

On 21 July 2004, the Economic and Social Council adopted resolution 2004/9 on “Genetic privacy and non-discrimination” in which it urged States to ensure that no one shall be subjected to discrimination based on genetic information. It further urged States to protect the privacy of those subject to genetic testing and to ensure that such testing and the subsequent processing, use and storage of human genetic data is done with the prior, free, informed and express consent of the individual or authorization obtained in the manner prescribed by law consistent with international law, including international human rights law, and to ensure that limitations on the principle of consent are prescribed only for compelling reasons, such as forensic medicine and related legal proceedings, by domestic law consistent with international law, including international human rights law.

Furthermore, the Council called upon States to take appropriate specific measures, including through legislation, to prevent the misuse of genetic information leading to discrimination against, or stigmatization of, individuals, members of their families or groups in all areas, particularly in insurance, employment, education and other areas of social life, whether in the public or the private sector, and, in this respect, called upon States to take all appropriate measures to ensure that the results and interpretations of population-based genetic studies are not used for purposes that discriminate against the individual or group concerned. It also urged States to continue to support research in the area of human genetics, subject to accepted scientific and ethical standards and to the potential benefit of all people, emphasizing that such research and its applications should fully respect human rights, fundamental freedoms and human dignity, as well as the prohibition of all forms of discrimination based on genetic characteristics.

## **6. Women and children**

### **(a) Women<sup>177</sup>**

#### **(i) *Commission on the Status of Women***

The Commission on the Status of Women was established by the Economic and Social Council in its resolution 11 (II) of 21 June 1946 as a functional commission in order to deal

<sup>176</sup> The resolution was adopted without a vote.

<sup>177</sup> For a complete list of signatories and States parties to international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women in *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV, and vol. II, chap. XVI.

with questions relating to gender equality and the advancement of women. It is the principal global policy-making body in this field and prepares recommendations and reports to the Council on the promotion of women's rights in political, economic, civil, social and educational fields.

The Commission held its forty-eighth session from 1 to 12 March 2004 in New York. During this session, the Commission adopted a number of resolutions for the attention of the Economic and Social Council, of which two are highlighted below.<sup>178</sup>

In resolution 48/2 entitled "Women, the girl child and HIV/AIDS", the Commission urged Governments to take all necessary measures to empower women and strengthen their economic independence and to protect and promote their full enjoyment of all human rights and fundamental freedoms in order to enable them to protect themselves from HIV infection. It further called upon Governments to intensify efforts to eliminate all forms of discrimination against women and girls in relation to HIV/AIDS, including through challenging stereotypes, stigmatization, discriminatory attitudes and gender inequalities, and to encourage the active involvement of men and boys in this regard.

In resolution 48/3 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts", the Commission urged all parties to armed conflicts to respect fully the norms of international humanitarian law in armed conflict and to take all necessary measures for the protection of the civilian population and to release immediately all women and children who have been taken hostage. It further urged all such parties to provide safe unimpeded access to humanitarian assistance for those women and children in accordance with international humanitarian law and stressed both the need to put an end to impunity and the responsibility of all States to prosecute in accordance with international law those responsible for war crimes, including hostage-taking.

#### (ii) *Economic and Social Council*

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission on the Status of Women, the following two resolutions:

(a) Resolution 2004/11 on "Agreed conclusions of the Commission on the Status of Women on the role of men and boys in achieving gender equality". In this resolution, the Economic and Social Council endorsed the agreed conclusions adopted by the Commission at its forty-eighth session, in which the Commission, *inter alia*, recognized that while men and boys sometimes face discriminatory barriers and practices, they can and do make contributions to gender equality in many capacities, including as individuals and as members of families, social groups and communities, in all spheres of society. The Commission also urged Governments and, as appropriate, the relevant bodies of the United Nations system, the international financial institutions, civil society, including the private sector and non-governmental organizations, and other stakeholders to take certain actions relating to the contribution of men and boys to gender equality.

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<sup>178</sup> For the report on the session, see *Official Records of the Economic and Social Council, 2004, Supplement No. 7 (E/2004/27-E/CN.6/2004/14)*.

(b) Resolution 2004/12 entitled “Agreed conclusions of the Commission on the Status of Women on women’s equal participation in conflict prevention, management and resolution and in post-conflict peace-building”. In this resolution, the Economic and Social Council endorsed the agreed conclusions adopted by the Commission at its forty-eighth session, in which the Commission, *inter alia*, called for the full respect of international human rights and humanitarian law, including the four Geneva Conventions of 1949,<sup>179</sup> in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. It also called for the promotion and protection of the full enjoyment of all human rights and fundamental freedoms by women and girls at all times, including during conflict prevention, conflict management and conflict resolution and in post-conflict peace-building.

Furthermore, the Commission stated that women’s full and equal participation and the integration of gender perspectives are crucial to democratic electoral processes in post-conflict situations. A gender-sensitive constitutional and legal framework, especially electoral laws and regulations, is necessary to ensure that women can fully participate in such processes. Political parties can play a crucial role in promoting women’s equal participation. Steps are also necessary to ensure that women participate fully in, and that a gender perspective is incorporated throughout, the design and implementation of voter and civic education programmes and in election administration and observation.

### (iii) *General Assembly*

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, the following resolutions.<sup>180</sup>

(a) Resolution 59/165 entitled “Working towards the elimination of crimes against women and girls committed in the name of honour”. In this resolution, the General Assembly called upon all States to take a number of steps, including intensifying efforts to prevent and eliminate crimes against women and girls committed in the name of honour by using legislative, administrative and programmatic measures. It also called upon States to investigate, prosecute and document cases of such crimes, to punish the perpetrators and to address effectively complaints, *inter alia*, by creating, strengthening or facilitating institutional mechanisms so that victims and others can report these crimes in a safe and confidential environment.

(b) Resolution 59/166 on “Trafficking in women and girls”. In this resolution, the General Assembly noted with appreciation the report of the Secretary-General<sup>181</sup> on this item and urged Governments to take appropriate measures to address the root factors, including poverty and gender inequality, as well as external factors that encourage the particular problem of trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriage and forced labour, in order to eliminate such trafficking, including by strengthening existing legislation with a view to providing better

<sup>179</sup> United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135, 287.

<sup>180</sup> The resolutions were adopted without a vote.

<sup>181</sup> A/59/185 and Corr.1.

protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures.

The Assembly also called upon all Governments to criminalize all forms of trafficking in persons, recognizing its increasing occurrence for purposes of sexual exploitation and sex tourism, and to condemn and penalize all those offenders involved, including intermediaries, whether local or foreign, through the competent national authorities, either in the country of origin of the offender or in the country in which the abuse occurs, in accordance with due process of law, while also ensuring that the victims of those practices are not penalized for being trafficked. It also called upon all Governments to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody.

The General Assembly further called upon Governments to take steps to ensure that the treatment of victims of trafficking, as well as all measures taken against trafficking in persons, in particular those that affect the victims thereof, pay particular attention to the needs of women and girls and are applied with full respect for the human rights and are consistent with internationally recognized principles of non-discrimination, including the prohibition of racial discrimination and the availability of appropriate legal redress, which may include measures that offer victims the possibility of obtaining compensation for damage suffered. It invited Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking in persons, in particular women and girls, from being prosecuted for their illegal entry or residence, bearing in mind that they are victims of exploitation.

In addition, the General Assembly also invited Governments to encourage Internet service providers to adopt or strengthen self-regulatory measures to promote the responsible use of the Internet with a view to eliminating trafficking in women and children, in particular girls.

(c) Resolution 59/167 entitled “Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century””. In this resolution, the General Assembly welcomed the report of the Secretary-General entitled “Violence against women”,<sup>182</sup> and stressed the need to treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.

(d) Resolution 59/168 entitled “Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly”. In this resolution, the General Assembly emphasized the importance of men and boys taking joint responsibility with women and girls in the promotion of gender equality, taking into account the agreed conclusions adopted by the Commission on the Status of Women at its forty-eighth session. It further recognized the important role of law, including legislation, in the promotion of gender equality and the implementation of the Beijing Platform for Action,<sup>183</sup> commended the progress made by States in the area of legal reform, and called upon States

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<sup>182</sup> A/59/281.

<sup>183</sup> *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

to continue their efforts to repeal laws and eradicate practices that discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality.

In addition, the General Assembly recognized the important role of women in the prevention and resolution of conflicts and in peacebuilding. It urged Governments and the United Nations system to take further steps to ensure the integration of gender perspectives and the full and equal participation of women at all levels of decision-making and implementation in all aspects of conflict prevention and resolution and peacebuilding activities and to ensure that efforts to strengthen the rule of law and transitional justice in conflict and post-conflict situations incorporate gender perspectives, with a view to achieving gender equality in constitutional, legislative and judicial reform.

## (b) Children<sup>184</sup>

### (i) General Assembly

On 23 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/261<sup>185</sup> entitled “Rights of the child”. In this resolution, the General Assembly urged States parties to the Convention on the Rights of the Child, 1989,<sup>186</sup> and the Optional Protocols<sup>187</sup> thereto to take all appropriate measures for the implementation of the rights recognized in the Convention by, *inter alia*, putting in place effective national legislation, policies and action plans, by strengthening relevant governmental structures for children and by ensuring adequate and systematic training in the rights of the child for professional groups working with and for children.

The Assembly called upon all States to address cases of international abduction of children, and encouraged them to engage in multilateral and bilateral cooperation so as to facilitate, *inter alia*, the return of the child to the country in which he or she resided immediately before the removal or retention and, in this respect, to pay particular attention to cases of international abduction of children by a parent or by other relatives.

Furthermore, the Assembly also called upon States to investigate and submit cases of torture and other forms of violence against children to the competent authorities for the purpose of prosecution, to impose appropriate disciplinary or penal sanctions against those responsible for such practices and to end impunity for perpetrators of crimes against children.

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<sup>184</sup> For a complete list of signatories and States parties to international instruments relating to children that are deposited with the Secretary-General, see the chapter relating to human rights in *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. IV.

<sup>185</sup> The resolution was adopted by a recorded vote of 166 in favour to 2, with 1 abstention.

<sup>186</sup> United Nations, *Treaty Series*, vol. 1577, p. 3.

<sup>187</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000. United Nations, *Treaty Series*, vol. 2173, p. 222. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000. United Nations, *Treaty Series*, vol. 2171, p. 227.

The General Assembly further called upon all States to ensure that no child in detention is sentenced to forced labour or corporal punishment or deprived of access to and provision of health-care services, hygiene and environmental sanitation, education, basic instruction and vocational training, taking into consideration the special needs of children with disabilities in detention, in accordance with their obligations under the Convention on the Rights of the Child, 1989.

With regard to the prevention and eradication of the sale of children, child prostitution and child pornography, the Assembly called upon all States to ensure the prosecution of offenders, whether local or foreign, by the competent national authorities, either in the country in which the crime was committed, or in the country of which the offender is a national or resident, or in the country of which the victim is a national, or on any other basis permitted under domestic law in accordance with due process of law, and for these purposes, to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings.

Concerning children affected by armed conflict, the General Assembly reaffirmed the essential roles of the General Assembly, the Economic and Social Council and the Commission on Human Rights in promoting and protecting the rights and welfare of children. It noted the importance of the debates held by the Security Council on children and armed conflict and its resolutions,<sup>188</sup> and took note of other recent documents on this issue<sup>189</sup> and of the importance of the undertaking by the Council to give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security, including provisions for the protection of children in the mandates of peacekeeping operations, as well as the inclusion of child protection advisers in those operations.

Furthermore, the General Assembly also took note of the report of the Secretary-General on the comprehensive assessment of the United Nations system response to children affected by armed conflict<sup>190</sup> and the report of the Special Representative of the Secretary-General for Children and Armed Conflict.<sup>191</sup>

In addition, it called upon States to take all feasible measures, as a matter of priority, to prevent the recruitment and use of children by armed groups, as distinct from the armed forces of a State, including the adoption of legal measures necessary to prohibit and criminalize such practices.

#### (ii) *Security Council*

On 22 April 2004, the Security Council adopted resolution 1539 regarding children and armed conflict. In this resolution, the Security Council, having considered the report of the Secretary-General,<sup>192</sup> stressed that the resolution did not seek to make any legal determination as to whether the situations referred to in the Secretary-General's report

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<sup>188</sup> Security Council resolutions 1379 (2003), 1460 (2003) and 1539 (2004).

<sup>189</sup> A/58/546-S/2003/1053 and Corr.1 and 2 and A/59/184-S/2004/602.

<sup>190</sup> A/59/331.

<sup>191</sup> A/59/426.

<sup>192</sup> A/58/546-S/2003/1053 and Corr.1 and 2.

are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto nor did it prejudge the status of the non-State parties involved in those situations.

The Security Council requested the Secretary-General, taking into account the proposals contained in his report as well as any other relevant elements, to devise urgently, and preferably within three months, an action plan for a systematic and comprehensive monitoring and reporting mechanism in order to provide timely, objective, accurate and reliable information on the recruitment and use of child soldiers in violation of applicable international law and on other violations and abuses committed against children affected by armed conflict, for consideration in taking appropriate action.

Furthermore, the Security Council expressed its intention to take appropriate measures, in particular while considering subregional and cross-border activities, to curb linkages between illicit trade in natural and other resources, illicit trafficking in small arms and light weapons, cross-border abduction and recruitment, and armed conflict, which can prolong armed conflict and intensify its impact on children, and consequently requested the Secretary-General to propose effective measures to control this illicit trade and trafficking.

The Security Council took note with deep concern of the continued recruitment and use of children by the parties mentioned in the Secretary-General's report, in the situations of armed conflict which are on its agenda, in violation of applicable international law relating to the rights and protection of children. In this regard the Council:

(a) Called upon these parties to prepare within three months concrete time-bound action plans to halt recruitment and use of children in violation of the international obligations applicable to them, in close collaboration with United Nations peacekeeping missions and United Nations country teams, consistent with their respective mandates;

(b) Requested the Secretary-General to ensure that compliance with the provisions of the resolution is reviewed regularly through a process involving all stakeholders at the country level, including government representatives, and coordinated by a focal point to be designated by the Secretary-General and in charge of engaging parties in dialogue leading to time-bound action plans, so as to report to the Secretary-General through his Special Representative by 31 July 2004, bearing in mind lessons learned from past dialogues as contained in paragraph 77 of the Secretary-General's report; and

(c) Expressed its intention to consider imposing targeted and graduated measures, through country-specific resolutions, such as, *inter alia*, a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan, bearing in mind the Secretary-General's report.

In addition, the Security Council noted with concern all the cases of sexual exploitation and abuse of women and children, especially girls, in humanitarian crisis, including those cases involving humanitarian workers and peacekeepers. It requested contributing countries to incorporate the Six Core Principles of the Inter-Agency Standing Commit-

tee on Emergencies<sup>193</sup> into pertinent codes of conduct for peacekeeping personnel and to develop appropriate disciplinary and accountability mechanisms and welcomed the promulgation of the Secretary-General's bulletin<sup>194</sup> on special measures for protection from sexual exploitation and sexual abuse.

Furthermore, the Security Council decided to continue the inclusion of specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including, on a case-by-case basis, the deployment of child protection advisers (CPAs), and requested the Secretary-General to ensure that the need for, and the number and roles of CPAs are systematically assessed during the preparation of each United Nations peacekeeping operation.

## 7. Humanitarian matters<sup>195</sup>

On 23 July 2004, the Economic and Social Council adopted resolution 2004/54 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In the said resolution, the Council took note of the report of the Secretary-General<sup>196</sup> on this item and strongly urged States to ensure that those responsible for attacks against humanitarian and United Nations and associated personnel are promptly brought to justice, as provided by obligations under national and international law.

On 20 December 2004, the General Assembly, without reference to a Main Committee, adopted resolution 59/211<sup>197</sup> entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", in which it welcomed the relevant report of the Secretary-General.<sup>198</sup> The Assembly also called upon all States to provide adequate and prompt information in the event of the arrest or detention of humanitarian or United Nations and associated personnel, to afford them the necessary medical assistance and to allow independent medical teams to visit and examine their health. It further urged States to take the necessary measures to ensure the speedy release of those who have been arrested or detained in violation of the relevant conventions referred to in the said resolution and applicable international humanitarian law.

Furthermore, the General Assembly called upon all other parties involved in armed conflicts to refrain from abducting humanitarian or United Nations and associated personnel or detaining them in violation of the relevant conventions referred to in the resolution and applicable international humanitarian law, and to speedily release, without harm or requirement of concession, any abductee or detainee.

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<sup>193</sup> A/57/465, annex I.

<sup>194</sup> ST/SGB/2003/13.

<sup>195</sup> See also the discussion in the section below on the Sixth Committee under the heading "Scope of legal protection under the Convention on Safety of United Nations and Associated Personnel".

<sup>196</sup> A/59/93-E/2004/74.

<sup>197</sup> The resolution was adopted without a vote.

<sup>198</sup> A/59/332.



## 8. Environment

### (a) International instruments<sup>199</sup>

During 2004, the following instruments were adopted:

(a) Amendment to the 1991 Convention on Environmental Impact Assessment in a Transboundary Context, on 4 June 2004;<sup>200</sup> and

(b) Amendments to Articles 25 and 26 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, on 17 February 2004.<sup>201</sup>

During 2004, the following instruments entered into force:

(a) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998, on 24 February 2004;<sup>202</sup> and

(b) Stockholm Convention on Persistent Organic Pollutants, 2001, on 17 May 2004.<sup>203</sup>

### (b) Implementation of instruments relating to the environment and development

On 22 December 2004, the General Assembly adopted, on the recommendation of the Second Committee, resolution 59/227<sup>204</sup> entitled “Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development”. In the said resolution, the General Assembly noted that the Commission on Sustainable Development at its twelfth session<sup>205</sup> undertook an in-depth evaluation of progress in implementing Agenda 21,<sup>206</sup> the Programme for the Further Implementation of Agenda 21,<sup>207</sup> and the Johannesburg Plan of Implementation.<sup>208</sup> Furthermore,

<sup>199</sup> For a complete list of signatories and States parties to international instruments relating to the environment that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XXVII. For a list of environmental law treaties deposited elsewhere, see the website of the United Nations Environment Programme at [www.unep.org](http://www.unep.org).

<sup>200</sup> Adopted by the States parties to the Convention. For the text of the Amendment, see annex VII to the report of the Third Meeting of the Parties (ECE/MP.EIA/6 (Decision III/7)).

<sup>201</sup> Adopted by the States parties to the Convention. For the text of the Amendments, see United Nations Economic Commission for Europe, document ECE/MP.WAT/14.

<sup>202</sup> United Nations, *Treaty Series*, vol. 2244, p. 337.

<sup>203</sup> United Nations, *Treaty Series*, vol. 2256, p. 119.

<sup>204</sup> The resolution was adopted without a vote.

<sup>205</sup> For the report of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 9 (E/2004/29)*.

<sup>206</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution I, annex II.

<sup>207</sup> *Ibid.*, resolution S-19/2, annex.

<sup>208</sup> *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

the General Assembly also took note of the report<sup>209</sup> of the Secretary-General on this item and called upon Governments to take action to ensure the effective implementation of and follow-up to the commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development.

Concerning the sustainable development for land use, the General Assembly also adopted, on the same day and on the recommendation of the Second Committee, resolution 59/235<sup>210</sup> entitled “Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa”. In the said resolution, the Assembly called upon Governments, where appropriate, in collaboration with relevant multilateral organizations, including the Global Environment Facility implementation agencies, to integrate desertification into their plans and strategies for sustainable development. The Assembly further took note of the note of the Secretary-General regarding implementation of the Convention.<sup>211</sup>

On the same date, the General Assembly also adopted, on the recommendation of the Second Committee, resolutions relating to water resources (59/228), climate change (59/234) and biodiversity (59/236).

In the area of protection against harmful products and waste, the Economic and Social Council adopted resolution 2004/55 on 23 July 2004, in which it urged all Governments to participate fully in the process of developing a strategic approach to international chemicals management by 2005, in order to achieve the 2020 target as set out in paragraph 23 of the Johannesburg Plan of Implementation. The Council also encouraged countries to implement the new Globally Harmonized System of Classification and Labelling of Chemicals, as agreed in paragraph 23 (c) of the Johannesburg Plan of Implementation.

## 9. Law of the Sea

### (a) Report of the Secretary-General

The Secretary-General, in his report to the General Assembly at its fifty-ninth session under the agenda item entitled “Oceans and the Law of the Sea”,<sup>212</sup> noted that 16 November 2004 marked the tenth anniversary of the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS), 1982,<sup>213</sup> and provided an overview of the developments since that date. The report also covered a number of topics including, maritime space, international shipping activities, crimes at sea and the marine environment. In addition, the outcome of the fourteenth meeting of the States parties to UNCLOS, held in New York from 16 to 18 June 2004, is summarized in the report.

In relation to the topic of maritime space, the report provided an overview of State practice, maritime claims and delimitation of maritime zones ten years after UNCLOS

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<sup>209</sup> A/59/220.

<sup>210</sup> The resolution was adopted without a vote.

<sup>211</sup> A/59/197, sect. II.

<sup>212</sup> A/59/62 and Add.1. Developments in 2004 which were covered in the report of the Secretary-General to the General Assembly at its sixtieth session (A/60/63) are also noted.

<sup>213</sup> United Nations, *Treaty Series*, vol. 1836, p. 3.

entered into force. It was noted that States, with respect to maritime zones, had shown a strong adherence to the principles and rules established by its provisions and that, to a large extent, 25 coastal States non-parties to UNCLOS also accepted the Convention as a source of customary international law.

The report also reviewed the developments relating to the three institutions established by UNCLOS since 1994, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf (CLCS). During 2004, the thirteenth and fourteenth sessions of the CLCS were held and, during the former session, a revised set of its Rules of Procedure was adopted.<sup>214</sup> The tenth annual session of ISA was held in 2004 and its substantive work focused on the development of regulations for prospecting and exploration for polymetallic sulphides and cobalt crusts.<sup>215</sup>

In the area of maritime boundaries, the maritime boundary dispute between Barbados and Trinidad and Tobago relating to the delimitation of the Exclusive Economic Zone (EEZ) and continental shelf between them was submitted by Barbados in February 2004 to arbitration before an arbitral tribunal constituted in accordance with annex VII to UNCLOS. In June the same year, an arbitral tribunal was also established under annex VII to settle the maritime boundary dispute between Guyana and Suriname.

Issues relating to flag State implementation were discussed at the fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. The Consultative Process adopted several recommendations for the General Assembly's consideration,<sup>216</sup> including that it request the Secretary-General, in cooperation and consultation with relevant agencies, organizations and offices, to further elaborate, *inter alia*, matters regarding the "genuine link" in relation to the duty of flag States to exercise effective control over ships flying their flag, and the consequences of non-compliance with such duties as prescribed in the relevant international instruments.

In his report, in relation to the topic of crimes at sea, the Secretary-General noted that several amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974,<sup>217</sup> entered into force on 1 July 2004. The amendments provide for a comprehensive maritime security regime for international shipping. The regime includes the International Ship and Port Facility Security (ISPS) Code, Part A, which is mandatory and Part B, which is voluntary. Flag States will now be required to issue a Continuous Synopsis Record (CSR) to ships flying their flag, designed to provide an on-board record of the history of the ship. In relation to smuggling of migrants and trafficking in persons, he also noted that the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000,<sup>218</sup> entered into force on 28 January 2004.

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<sup>214</sup> CLCS/40.

<sup>215</sup> ISBA/10/LTC/WP.1.

<sup>216</sup> A/59/122, paras. 10, 31–42.

<sup>217</sup> United Nations, *Treaty Series*, vol. 1184, p. 2.

<sup>218</sup> General Assembly resolution 55/25, annex III.

At the request of the General Assembly in resolution 58/240, the Secretary-General also described in his report the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction. The report contained an overview of the existing legal and policy framework, at the global and regional level, to address the conservation and management of vulnerable marine ecosystems and biodiversity beyond national jurisdiction.

### **(b) General Assembly**

On 17 November 2004, the General Assembly, without reference to a Main Committee, adopted resolution 59/24<sup>219</sup> entitled "Oceans and the law of the sea".

On the subject of the marine environment, marine resources, marine biodiversity and the protection of vulnerable marine ecosystems, the General Assembly decided to establish an Ad Hoc Open-ended Informal Working Group to study specified issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Regarding inter-agency coordination and cooperation, the General Assembly noted, in the same resolution, the establishment of the Oceans and Coastal Areas Network (UN-Oceans), a new inter-agency mechanism for coordination and cooperation on issues relating to oceans and coastal issues, called for in paragraph 69 of General Assembly resolution 58/240.

On the same date, the General Assembly also adopted, without reference to a Main Committee, resolution 59/25<sup>220</sup> entitled "Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments". In the said resolution the Assembly welcomed the entry into force of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, 2000, on 19 June 2004, and noted with satisfaction the entry into force on 1 February 2004 of the Agreement on the Conservation of Albatrosses and Petrels under the Convention on the Conservation of Migratory Species of Wild Animals, 2001.

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<sup>219</sup> The resolution was adopted by a recorded vote of 141 in favor to 1, with 2 abstentions.

<sup>220</sup> The resolution was adopted without a vote.

## 10. Economic, social, cultural and related questions

### Culture

#### (i) *International instruments*<sup>221</sup>

The Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999, entered into force on 9 March 2004.<sup>222</sup>

#### (ii) *Economic and Social Council*

On 21 July 2004, the Economic and Social Council adopted resolution 2004/34 entitled “Protection against trafficking in cultural property”, in which it took note of the Cairo Declaration on the Protection of Cultural Property, made at the international conference celebrating the fiftieth anniversary of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict,<sup>223</sup> held in Cairo from 14 to 16 February 2004 as well as its relevant recommendations. The Council also noted the report of the Secretary-General entitled “Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.”<sup>224</sup>

In the said resolution, the Economic and Social Council also requested the Secretary-General to direct the United Nations Office on Drugs and Crime, in close cooperation with the United Nations Educational, Scientific and Cultural Organization, to convene an expert group meeting to submit relevant recommendations to the Commission on Crime Prevention and Criminal Justice, at its fifteenth session, on the protection against trafficking in cultural property, including ways of making more effective the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

Furthermore, the Council encouraged Member States asserting State ownership of cultural property to consider means of issuing statements of such ownership with a view to facilitating the enforcement of property claims in other States. It also urged Member States to continue to strengthen international cooperation and mutual assistance in the prevention and prosecution of crimes against movable property that forms part of the cultural heritage of peoples.

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<sup>221</sup> For a complete list of signatories and States parties to international instruments relating to educational and cultural matters that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publications, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XIV. For a complete list of signatories and States parties to international instruments relating to cultural matters adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization solely or jointly with other international organizations, see [www.unesco.org](http://www.unesco.org).

<sup>222</sup> United Nations, *Treaty Series*, vol. 2253, p. 172.

<sup>223</sup> United Nations, *Treaty Series*, vol. 249, p. 358.

<sup>224</sup> E/CN.15/2004/10 and Add.1.

## 11. Crime prevention and criminal justice<sup>225</sup>

### (a) International instruments<sup>226</sup>

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000,<sup>227</sup> came into force on 28 January 2004.

The first session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime was held in Vienna from 28 June to 9 July 2004.<sup>228</sup>

### (b) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission in order to deal with a broad scope of policy matters in this field, including combatting national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection; crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions.

The thirteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 11 to 20 May 2004.<sup>229</sup> During the session, the Commission provided policy guidance and direction to the United Nations Office on Drugs and Crime (UNODC) and held a thematic discussion on the rule of law and development.

### (c) Economic and Social Council

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission of Crime Prevention and Criminal Justice, several resolutions on this item:

(a) Resolution 2004/24 entitled “Establishment of an intergovernmental expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds

<sup>225</sup> This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crimes at [www.unodc.org](http://www.unodc.org).

<sup>226</sup> For a complete list of signatories and States parties to international instruments relating to penal matters that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. II, chap. XVIII.

<sup>227</sup> General Assembly resolution 58/25, annex III.

<sup>228</sup> For the report of the Conference of Parties, see CTOC/COP/2004/6 and Corr.1.

<sup>229</sup> For the report of the thirteenth session of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 10 (E/2004/30)*.

of crime covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988". In the said resolution, the Council requested the Secretary-General to convene an open-ended intergovernmental expert group to prepare a draft model bilateral agreement on sharing confiscated proceeds of crime covered by the Conventions.

(b) Resolution 2004/25 entitled "The rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, with emphasis on technical assistance, including in post-conflict reconstruction". In this resolution, the Council requested the United Nations Office on Drugs and Crime (UNODC), in coordination with the Department of Peacekeeping Operations and other relevant entities charged with providing assistance to countries in post-conflict situations, to consider specific practical strategies to assist in promoting the rule of law, especially in countries emerging from conflict, and taking an integrated approach to crime prevention and criminal justice reform, with particular emphasis on protecting vulnerable groups.

(c) Resolution 2004/26 on "International cooperation in the prevention, investigation, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes". In this resolution, the Council requested the Secretary-General to convene an intergovernmental expert group to prepare a study on fraud and the criminal misuse and falsification of identity. It also requested the intergovernmental expert group to use the information gained by the study for the purpose of developing useful practices, guidelines or other materials in this area.

(d) Resolution 2004/27 entitled "Guidelines on justice for child victims and witnesses of crime". In the said resolution, the Council requested the Secretary-General to convene an intergovernmental expert group in order to develop guidelines on justice in matters involving child victims and witnesses of crime. It further requested the intergovernmental expert group to take into consideration any relevant material, including the guidelines on justice for child victims and witnesses of crime drawn up by the International Bureau for Children's Rights, annexed to the above resolution.

(e) Resolution 2004/28 on "United Nations standards and norms in crime prevention and criminal justice". In the said resolution, the Council took note of the report of the Secretary-General<sup>230</sup> and of the report of the Intergovernmental Expert Group Meeting on this item<sup>231</sup> as well as the instruments for gathering information on United Nations standards and norms related primarily to persons in custody, non-custodial sanctions and juvenile and restorative justice, as revised by the Intergovernmental Expert Group Meeting. In the said resolution, the Council requested certain measures to be taken in order to review and reform the process of information gathering with regard to the application of United Nations standards and norms, and to streamline the provision of technical assistance in the use and application of such standards and norms. The Secretary-General was also requested to convene a meeting of intergovernmental experts to design information-gathering instruments on: (i) Standards and norms related to legal, institutional and

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<sup>230</sup> E/CN.15/2004/9.

<sup>231</sup> *Ibid.*, Add.1.

practical arrangements for international cooperation, wherever feasible; and (ii) Standards and norms primarily related to crime prevention and victim issues.

(f) Resolution 2004/35 on “Combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities”. In the said resolution, the Council urged Member States to consider, where appropriate and in accordance with national legislation, the use of alternatives to imprisonment, as well as early release, for prisoners with advanced AIDS, and requested and encouraged UNODC to work in coordination with other relevant United Nations entities to collect information and analyze the situation of HIV/AIDS in pre-trial and correctional facilities, with a view to providing Governments with programmatic and policy guidelines.

Also on 21 July 2004, the Economic and Social Council adopted resolutions on strengthening international cooperation and technical assistance in combating money laundering (2004/29), on the prevention of urban crime (2004/31), on the implementation of technical assistance projects in Africa by UNODC (2004/32), and on strengthening the technical cooperation capacity of the crime prevention and criminal justice programme of UNODC (2004/33).

#### (d) General Assembly

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/157<sup>232</sup> on “International cooperation in the fight against transnational organized crime: assistance to States in capacity-building with a view to facilitating the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”. In the said resolution, the Assembly took note of the report of the Secretary-General on the Convention against Transnational Organized Crime and the Protocols thereto,<sup>233</sup> and requested UNODC to continue to assist States with capacity-building in the area of international cooperation in criminal matters, in particular extradition and mutual legal assistance.

Also in the area of technical assistance and capacity-building, the General Assembly, on the same date, adopted resolutions on strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime (59/153); on the action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption (59/155); and on strengthening the United Nations Crime Prevention and Criminal Justice Programme,<sup>234</sup> in particular its technical cooperation capacity (59/159).

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<sup>232</sup> The resolution was adopted without a vote.

<sup>233</sup> E/CN.15/2004/5.

<sup>234</sup> For the report of the Secretary-General entitled “Strengthening the United Nations Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”, see A/59/205. The report of the Secretary-General outlined the work of the United Nations Crime Prevention and Criminal Justice Programme of the United Nations Office on Drugs and Crime and other developments during the year.



In addition, the Assembly also adopted resolutions on international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims (59/154)<sup>235</sup> and on preventing, combating and punishing trafficking in human organs (59/156).

Furthermore, on 22 December 2004, the General Assembly adopted, on the recommendation of the Second Committee, resolution 59/242<sup>236</sup> entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets to the countries of origin”. In the said resolution the Assembly took note of the report of the Secretary-General,<sup>237</sup> encouraged all Governments to prevent, combat and penalize corruption in all its forms, including bribery, money-laundering and the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery consistent with the principles of the United Nations Convention against Corruption, 2003.<sup>238</sup>

## 12. International drug control<sup>239</sup>

### (a) Commission on Narcotic Drugs<sup>240</sup>

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council resolution 1999/30, the Commission’s agenda is structured in two distinct segments; one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. Furthermore, the Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its forty-seventh session, on 27 November 2003 and from 15 to 19 March 2004, in Vienna,<sup>241</sup> the Commission held a thematic debate on “Synthetic drugs and control of precursors: production of, trafficking in and abuse of synthetic drugs, including methaqualone (Mandrax); strengthening systems for the control of precursor chemicals and to prevent diversion of and trafficking in such chemicals”.

The following resolutions were adopted by the Commission and brought to the attention of the Economic and Social Council.

<sup>235</sup> For the report entitled “International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims”, see E/CN.15/2004/7 and Add.1.

<sup>236</sup> The resolution was adopted without a vote.

<sup>237</sup> For the report entitled “Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such assets to the countries of origin”, see A/59/203 and Add.1.

<sup>238</sup> General Assembly resolution 58/4 of 31 October 2003.

<sup>239</sup> For a complete list of signatories and States parties to international instruments relating to narcotic drugs and psychotropic substances that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. VI.

<sup>240</sup> For detailed information and documents regarding this topic generally, see the website of the United Nations Office on Drugs and Crime at [www.unodc.org](http://www.unodc.org).

<sup>241</sup> For the report of the Commission, see *Official Records of the Economic and Social Council, 2004, Supplement No. 8 (E/2004/28)*.

(a) Resolution 47/4 entitled “Cooperative initiatives and intelligence-sharing as part of international efforts to fight illicit drugs”, in which Member States were encouraged to sign formal memoranda of understanding between national law enforcement authorities, providing a framework for mutual assistance and for cooperation in investigations of transnational criminal activity.

(b) Resolution 47/5 entitled “Illicit drug profiling in international law enforcement: maximizing outcome and improving cooperation”, in which Member States were called upon to seek to review their legislation with a view to facilitating the exchange of drug profiling information and drug samples with other States.

(c) Resolution 47/6 on “Effective controlled delivery”, in which Member States were encouraged to consider adopting national laws and procedures in respect of controlled delivery operations or to review them where appropriate, to ensure that suitable legislation, resources, expertise, procedures and coordination mechanisms are in place to enable such operations.

### **(b) Economic and Social Council**

On 21 July 2004, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, resolution 2004/42 entitled “Sale of internationally controlled licit drugs to individuals via the Internet”. In this resolution, the Council called upon Member States to enforce the provisions of article 30 of the Single Convention on Narcotic Drugs, 1961,<sup>242</sup> and article 10 of the Convention on Psychotropic Substances, 1971,<sup>243</sup> as they apply to pharmacies within their territory, specifically with regard to the need: (i) to license those that distribute internationally controlled licit drugs via the Internet and to require them to disclose information regarding the identity of the parties responsible and their legal location; and (ii) to actively pursue those that are in violation of the importing and exporting provisions of those Conventions. The Council also encouraged Member States to enact or, where appropriate, to enhance sanctions or penalties for providing internationally controlled licit drugs over the Internet without a valid prescription within their national borders. It further encouraged Member States that do not have laws that preclude trade in internationally controlled licit drugs via the Internet to establish such laws or regulations including certain minimum requirements and obligations set out in the resolution.

On the same date and on the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council also adopted the following resolutions: “Drug control and related crime prevention for countries emerging from conflict” (2004/39); “Guidelines for psychologically assisted pharmacological treatment of persons dependent on opioids” (2004/40); and “Control of the manufacture of trafficking in and abuse of synthetic drugs” (2004/41).

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<sup>242</sup> United Nations, *Treaty Series*, vol. 976, p. 3.

<sup>243</sup> *Ibid.*, vol. 1019, p. 175.

### (c) General Assembly

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/163<sup>244</sup> on “International cooperation against the world drug problem”, in which it called upon all States to strengthen international cooperation among judicial and law enforcement authorities in order to prevent and combat illicit drug trafficking, including by establishing and strengthening regional mechanisms, providing technical assistance, and establishing effective methods for cooperation, in particular in the areas of air, maritime, port and border control and in the implementation of extradition treaties. The Assembly further urged States to strengthen their actions aimed at preventing and combating the laundering of proceeds derived from drug trafficking and related criminal activities, and to improve information-sharing among financial institutions and agencies in charge of preventing and detecting the laundering of such proceeds.

## 13. Refugees and displaced persons<sup>245</sup>

### (a) Executive Committee of the Programme of the United Nations High Commissioner for Refugees<sup>246</sup>

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees was established by the Economic and Social Council in 1958 and functions as a subsidiary organ of the General Assembly and reports to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the Office of the United Nations High Commissioner for Refugees (UNHCR), and to advise it on international protection issues and discuss a wide range of other items with UNHCR and its intergovernmental and non-governmental partners. The fifty-fifth session of the Executive Committee was held in Geneva from 4 to 8 October 2004,<sup>247</sup> during which it adopted a number of conclusions.

In its Conclusion A entitled “General Conclusions on International Protection”, the Executive Committee, *inter alia*, expressed concern at the persecution, generalized violence and violations of human rights which continue to cause and perpetuate displacement within and beyond national borders and which increase the challenges faced by States in effecting durable solutions. In this regard, it called on States to address these challenges while ensuring full respect for the fundamental principle of *non-refoulement*, including the non-rejection at frontiers without access to fair and effective procedures for determining status and needs of protection. Furthermore, the Executive Committee also reiterated

<sup>244</sup> The resolution was adopted without a vote.

<sup>245</sup> For a complete list of signatories and States parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2004* (United Nations publication, Sales No. E.05.V.3, ST/LEG/SER.E/23), vol. I, chap. V.

<sup>246</sup> For detailed information and documents regarding this topic generally, see the website of UNHCR at [www.unhcr.org](http://www.unhcr.org).

<sup>247</sup> For the report of the fifty-fifth session of the Executive Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 12A (A/59/12/Add.1)*.

that the grant of asylum to refugees is a peaceful and humanitarian act, and that all actors are obliged to abstain from any activity which serves to undermine it.

In its Conclusion C entitled “Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees”, the Executive Committee invited countries of origin, in cooperation with UNHCR, other States and concerned actors, to address issues of a legal and administrative nature which are likely to hinder voluntary repatriation in a safe and dignified manner, by taking into consideration the guidance set out in the Conclusion. In this regard, the Executive Committee, *inter alia*, reaffirmed that refugees have the right to return to their own country and that States have the obligation to receive their own nationals and should facilitate such return. It also recognized that refugees, in exercising their right to return, should, in principle, have the possibility to return to their place of origin, or to a place of residence of their choice, subject only to restrictions permitted by international human rights law. It further emphasized that in the context of voluntary repatriation, countries of asylum have the responsibility to protect refugees from threats and harassment, including from any groups or individuals who may impede their access to information on the situation in the country of origin or may impede the exercise of their free will regarding the right to return. The Committee reaffirmed that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin in order not to impede the exercise of the refugees’ right to return and recognized that the voluntary repatriation and reintegration process is normally guided by the conditions in the country of origin.

Furthermore, the Executive Committee strongly urged countries of origin to ensure that returning refugees do not face a risk of persecution, discrimination or detention due to their departure from the country or on account of their status as refugees, their political opinion, race, ethnic origin, religious belief or membership of a particular social group. It also recognized the utility of amnesties in encouraging voluntary repatriation and recommended that countries of origin issue amnesty declarations granting returning refugees immunity from prosecution for having left or remaining outside the country. However, such amnesties should not be extended to returning refugees charged with, *inter alia*, a serious violation of international humanitarian law, genocide, crime against humanity, crime constituting a serious violation of human rights, or a serious common crime involving death or serious bodily harm, committed prior to or during exile.

With regard to property rights, the Executive Committee recognized that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile and noted the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees’ property. In this context, it also noted that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin. Furthermore, any restitution and compensation framework should take account of the situation of returning refugee women, in particular where women are prevented from securing property rights in accordance with inheritance laws or where inheritance procedures prevent them from recovering their property within a reasonable period of time.

With the aim of avoiding statelessness, the Executive Committee also noted in its Conclusion the importance of ensuring nationality and urged countries of origin to ensure that there is no exclusion of returning refugees from nationality. In this regard, it recalled Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons and noted the importance of providing, under national law, for the recognition of the civil status of returning refugees and changes thereto, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere. The Executive Committee called on countries of origin and countries of habitual residence to accept refugees who are non-nationals but who have been habitually resident in that country, including those who were previously stateless there.

### (b) General Assembly<sup>248</sup>

On 20 December 2004, the General Assembly adopted, on the recommendation of the Third Committee, resolution 59/170<sup>249</sup> entitled “Office of the United Nations High Commissioner for Refugees”, in which it considered the report of the High Commissioner on the activities of the Office<sup>250</sup> and endorsed the report of the Executive Committee of the Programme of UNHCR on the work of its fifty-fifth session.

In the said resolution, the General Assembly recognized the desirability of countries of origin addressing issues of a legal and administrative nature which are likely to hinder the voluntary repatriation in a safe and dignified manner, bearing in mind that some legal safety or administrative issues may be addressed only over time and that voluntary repatriation can and does take place without all legal and administrative issues having first been resolved. Furthermore, the General Assembly also emphasized the obligation of all States to accept the return of their nationals and called upon States to facilitate the return of those who have been determined not to be in need of international protection.

## 14. International Court of Justice<sup>251</sup>

### (a) Organization of the Court

In 2004, the composition of the Court is as follows:

President: Shi Jiuyong (China);

Vice-President: Raymond Ranjeva (Madagascar);

Judges: Gilbert Guillaume (France); Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (the Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (the Netherlands); Francisco Rezek

<sup>248</sup> For resolutions dealing with refugees in particular regional areas, see the following resolutions adopted by the General Assembly: 59/117 of 10 December 2004 (Assistance on Palestine refugees), 59/119 of 10 December 2004 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), of 10 December 2004 59/120 (Palestine refugees’ properties and their revenues), and 59/172 of 20 December 2004 (Assistance to refugees, returnees and displaced persons in Africa).

<sup>249</sup> The resolution was adopted without a vote.

<sup>250</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 12 (A/59/12)*.

<sup>251</sup> Information about the cases before the International Court of Justice during 2004 is contained in chapter VII below.

(Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (the United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); and Peter Tomka (Slovakia).

In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure, which is constituted as follows:

*Members*

President Shi Jiuyong

Vice-President R. Ranjeva

Judges G. Parra-Aranguren, A. S. Al-Khasawneh and T. Buergenthal

*Substitute Members*

Judges N. Elaraby and H. Owada

Following the election held on 6 February 2003, the Court's Chamber for Environmental Matters, which was established in 1993 pursuant to Article 26, paragraph 1, of the Statute, and whose mandate in its present composition runs to February 2006, is composed as follows:

President Shi Jiuyong

Vice-President R. Ranjeva

Judges G. Guillaume, P. H. Kooijmans, F. Rezek, B. Simma and P. Tomka

### (b) Jurisdiction of the Court

On 28 May 2004, Slovakia deposited a declaration recognizing the compulsory jurisdiction of the Court. As at 31 December 2004, 65 States had made such declarations, as contemplated by Article 36, paragraphs 2 and 5, of the Statute.

The declaration of Slovakia reads as follows:

“On behalf of the Slovak Republic I have the honour to declare that the Slovak Republic recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute of the Court over all legal disputes arising after the date of signature of the present declaration with regard to situations or facts subsequent to the same date.

This declaration does not apply to disputes:

(1) Which the parties have agreed to settle by some other method of peaceful settlement;

(2) In respect of which any other Party to the dispute has accepted the jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or when the declaration recognizing the jurisdiction of the Court on behalf of any other Party to the dispute was deposited less than twelve months prior to the filing of the unilateral application bringing the dispute before the Court;

(3) With regard to the protection of environment;

(4) With regard to questions which by international law fall exclusively within the domestic jurisdiction of the Slovak Republic.

The Slovak republic reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the date of receipt of such notification, to amend or withdraw this declaration.

Done at Bratislava on 11 May 2004

[Signed] Rudolf Schuster

President of the Slovak Republic”

### (c) General Assembly

At its fifty-ninth session, on 4 November 2004, the General Assembly adopted, without reference to a Main Committee, decision 59/508<sup>252</sup> taking note of the report of the International Court of Justice for the period from 1 August 2003 to 31 July 2004.

## 15. International Law Commission<sup>253</sup>

### (a) Membership of the Commission

The membership of the International Law Commission for the 2002–2006 quinquennium, at its fifty-sixth session consisted of Mr. Emmanuel Akwei Addo (Ghana); Mr. Husain M. Al-Baharna (Bahrain); Mr. Ali Mohsen Fetais Al-Marri (Qatar); Mr. Joao Clemente Baena Soares (Brazil); Mr. Ian Brownlie (United Kingdom); Mr. Enrique Candiotti (Argentina); Mr. Choung Il Chee (Republic of Korea); Mr. Pedro Comissário Afonso (Mozambique); Mr. Riad Daoudi (Syrian Arab Republic); Mr. Christopher John Robert Dugard (South Africa); Mr. Constantin P. Economides (Greece);<sup>254</sup> Ms. Paula Escarameia (Portugal); Mr. Salifou Fomba (Mali); Mr. Giorgio Gaja (Italy); Mr. Zdzislaw Galicki (Poland); Mr. Peter C. R. Kabatsi (Uganda);<sup>255</sup> Mr. Maurice Kamto (Cameroon); Mr. James Lutabanzibwa Kateka (United Republic of Tanzania); Mr. Fathi Kemicha (Tunisia); Mr. Roman Anatolyevitch Kolodkin (Russian Federation);<sup>256</sup> Mr. Martti Koskenniemi (Finland); Mr. William R. Mansfield (New Zealand); Mr. Michael Matheson (United States);<sup>257</sup> Mr. Theodor Viorel Melescanu (Romania);<sup>258</sup> Mr. Djamchid Momtaz (Islamic Republic of

<sup>252</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49 (A/59/49)*, vol. II.

<sup>253</sup> Detailed information and documents regarding the work of the Commission may be found at the Commission’s website: [www.un.org/law/ilc/index.htm](http://www.un.org/law/ilc/index.htm).

<sup>254</sup> Elected by the Commission in 2003 to fill the casual vacancies in the Commission’s membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

<sup>255</sup> Elected by the Commission in 2002 to fill the casual vacancy following the death of Mr. Adegoke Ajibola Ige (Nigeria).

<sup>256</sup> Elected by the Commission in 2003 to fill the casual vacancies in the Commission’s membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

<sup>257</sup> Elected by the Commission in 2003 to fill the casual vacancy arising from the resignation of Mr. Robert Rosenstock (United States of America).

<sup>258</sup> Elected by the Commission in 2003 to fill the casual vacancies in the Commission’s membership arising from the death of Mr. Valery Kuznetzov (Russian Federation) and the election of Mr. Bruno Simma (Germany) and Mr. Peter Tomka (Slovakia) to the International Court of Justice.

Iran); Mr. Bernd H. Nihau (Costa Rica); Mr. Didier Opertti Badan (Uruguay); Mr. Guillaume Pambou-Tchivounda (Gabon); Mr. Alain Pellet (France); Mr. Pemmaraju Sreenivasa Rao (India); Mr. Victor Rodríguez Cedeño (Venezuela); Mr. Bernardo Sepulveda (Mexico); Ms. Hanqin Xue (China); and Mr. Chusei Yamada (Japan).

### (b) Fifty-sixth session of the Commission

The International Law Commission held the first part of its fifty-sixth session from 3 May to 4 June and the second part of the session from 5 July to 6 August 2004 at its seat at the United Nations Office in Geneva.<sup>259</sup> The Commission considered the following topics.

As regards the topic “Diplomatic protection”, the Commission considered the fifth report<sup>260</sup> of the Special Rapporteur (Mr. John Dugard), concerning the relationship between diplomatic protection and functional protection by international organizations, diplomatic protection and human rights, and diplomatic protection and protection of ships’ crews by the flag State. The Commission requested the Special Rapporteur to consider whether the doctrine of clean hands is relevant to the topic of diplomatic protection and, if so, whether it should be reflected in the form of an article. A memorandum<sup>261</sup> on this topic was prepared by the Special Rapporteur, but the Commission did not have time to consider it and decided to consider this issue at the next session. The Commission referred draft article 21 and a reformulation of draft article 26 to the Drafting Committee and requested the Committee to consider elaborating a provision on the connection between the protection of ships’ crews and diplomatic protection. The Commission considered the report of the Drafting Committee and adopted on first reading a set of 19 draft articles on diplomatic protection. The Commission decided to transmit the draft articles to Governments for comments, in accordance with articles 16 and 21 of its Statute.

Concerning the topic “Responsibility of International Organizations”, the Special Rapporteur (Mr. Giorgio Gaja), submitted his second report<sup>262</sup> dealing with attribution of conduct to international organizations. The report proposed four draft articles which were considered by the Commission and referred to the Drafting Committee. The four draft articles (article 4 “General rule on attribution of conduct to an international organization”, article 5 “Conduct of organs placed at the disposal of an international organization by a State or another international organization”, article 6 “Excess of authority or contravention of instructions”, and article 7 “Conduct acknowledged and adopted by an international organization as its own”) were adopted together with commentaries by the Commission.

As regards the topic “Shared Natural Resources”, the Commission considered the second report<sup>263</sup> of the Special Rapporteur (Mr. Chusei Yamada), which contained seven draft articles. In view of the sensitivity expressed both in the Commission and in the Sixth Committee on the use of the term “shared resources”, which might refer to the common heritage of mankind or to the notion of shared ownership, the Special Rapporteur pro-

<sup>259</sup> For the report of the International Law Commission on the work of its fifty-sixth session, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 10 (A/59/10)*.

<sup>260</sup> A/CN.4/538.

<sup>261</sup> ILC(LVI)/DP/CPR.1.

<sup>262</sup> A/CN.4/541.

<sup>263</sup> A/CN.4/539 and Add.1.



posed to focus on the sub-topic of “transboundary groundwaters” without using the term “shared”. The Special Rapporteur did not recommend referring any of the draft articles to the Drafting Committee; the draft articles were formulated so as to generate comments, to receive more concrete proposals and also to identify additional areas that should be addressed. An open-ended Working Group on Transboundary Groundwaters was established by the Commission, chaired by the Special Rapporteur. The Working Group held three meetings.

In relation to the topic “International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law (International Liability in Case of Loss from Transboundary Harm Arising Out of Hazardous Activities) the Commission considered the second report<sup>264</sup> of the Special Rapporteur (Mr. Pemmaraju Sreenivasa Rao). A Working Group was established and it reviewed and revised the 12 draft principles submitted by the Special Rapporteur and recommended to the Committee that eight draft articles be referred to the Drafting Committee. The Commission did so and also asked the Drafting Committee to prepare the text of a preamble. The Commission adopted on first reading a set of eight draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit the draft principles, through the Secretary-General, to Governments for comments and observations.

As regards the topic “Unilateral Acts of States”, the Commission considered the seventh report<sup>265</sup> of the Special Rapporteur (Mr. Victor Rodríguez Cedeño), which contained a survey of State practice in respect of unilateral acts and took account of the need to identify the relevant rules for codification and progressive development. A Working Group on Unilateral Acts was reconstituted and its work focused on the detailed consideration of specific examples of unilateral acts.

Concerning the topic “Reservations to Treaties”, the Commission considered the ninth report<sup>266</sup> of the Special Rapporteur (Mr. Alain Pellet). The ninth report concerned the object and definition of objections. The report constituted a complementary section to the eighth report<sup>267</sup> on the formulation of objections to reservations and interpretative declarations. The Commission referred two draft guidelines (2.6.1 “Definition of objections to reservations” and 2.6.2 “Objection to late formulation or widening of the scope of a reservation”), to the Drafting Committee. The Commission adopted five draft guidelines, (draft guideline 2.3.5 “Widening of the scope of a reservation”, 2.4.9 “Modification of an interpretative declaration”, 2.4.10 “Limitation and widening of the scope of a conditional interpretative declaration”, 2.5.12 “Withdrawal of an interpretative declaration”, and 2.5.13 “Withdrawal of a conditional interpretative declaration”). The Commission also adopted the commentaries to the draft guidelines.

As regards the topic “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”, the Study Group of the Commission<sup>268</sup> considered the preliminary report on the Study on the function and scope of

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<sup>264</sup> A/CN.4/540.

<sup>265</sup> A/CN.4/542 and Corr.1 (French only) Corr.2 and Corr.3.

<sup>266</sup> A/CN.4/544.

<sup>267</sup> A/CN.4/535 and Add.1.

<sup>268</sup> For the report of the Study Group, see A/CN.4/L.663/Rev.1.

the *lex specialis* rule and the question of self-contained regimes, as well as outlines on the Study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties, 1969<sup>269</sup>); on the Study concerning the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties, 1969); on the Study on the interpretation of treaties in the light of “any relevant rules on international law applicable in relations between parties” (article 31 (3)(c) of the Vienna Convention on the Law of Treaties, 1969); and the Study on hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules.

On the recommendation of the Planning Group, the Commission decided to include in its current programme of work two new topics, “Expulsion of aliens” and “Effects of armed conflicts on treaties”. The Commission decided to appoint Mr. Maurice Kamto, Special Rapporteur for the topic “Expulsion of aliens” and Mr. Ian Brownlie, Special Rapporteur for the topic “Effects of armed conflicts on treaties”. The Commission also agreed with the recommendation of the Planning Group to include the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” in its long-term programme of work. The Commission envisaged the inclusion of this topic in its current programme of work as of its next session.

### (c) General Assembly

On 2 December 2004, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 59/4<sup>270</sup> entitled “Report of the International Law Commission on the work of its fifty-sixth session”.

In the said resolution, the General Assembly took note of the report of the International Law Commission and drew the attention of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the agenda, in particular on the draft articles and commentary on diplomatic protection and the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. The General Assembly invited Governments to provide information to the International Law Commission regarding their practice, bilateral or regional, regarding the allocation of groundwaters from transboundary aquifer systems and the management of non-renewable transboundary aquifer systems relating to the topic entitled “Shared natural resources”, and State practice on the topic “Unilateral acts of States”. The General Assembly further endorsed the decision of the Commission to include in its agenda the topics “Expulsion of Aliens” and “Effects of armed conflicts on treaties”.

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<sup>269</sup> United Nations, *Treaty Series*, vol. 1155, p. 331.

<sup>270</sup> The resolution was adopted without a vote.

## 16. United Nations Commission on International Trade Law

### (a) United Nations Commission on International Trade Law<sup>271</sup>

The United Nations Commission on International Trade Law (UNCITRAL) held its thirty-seventh session in Vienna from 14 to 25 June 2004 and adopted its report<sup>272</sup> on 20 and 25 June 2004.

During the session, the Commission considered and adopted the UNCITRAL Legislative Guide on Insolvency Law<sup>273</sup> (to which the UNCITRAL Model Law on Cross-Border Insolvency and its Guide to enactment is annexed) and recommended that States assess the economic efficiency of their insolvency regimes and give favorable consideration to the Legislative Guide when revising or adopting legislation relevant to insolvency. The Commission noted with appreciation the participation in and support of international inter-governmental and non-governmental organizations active in the field of insolvency law reform in the development of the Legislative Guide and confirmed its intention to continue coordination and cooperation with the World Bank and the International Monetary Fund to facilitate the development of a unified international standard in this area.

With respect to the topic of arbitration, the Commission had before it the reports of Working Group II (Arbitration and Conciliation) on its thirty-ninth and fortieth sessions.<sup>274</sup> The Commission noted that discussions had continued on a draft text for revision of article 17 of the UNCITRAL Model Law on International Commercial Arbitration on the power of an arbitral tribunal to grant interim measures of protection and on insertion of a new article of the Model Law, tentatively numbered 17 *bis*, on the recognition and enforcement of such interim measures.

With respect to transport law, the Commission had before it the reports of Working Group III (Transport Law) on its twelfth and thirteenth sessions<sup>275</sup> and noted that the Working Group had achieved progress on a number of difficult issues arising in the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea].

In connection with electronic commerce, the Commission noted the progress made by the Secretariat in the development of a draft convention dealing with selected issues on electronic contracting and noted that Working Group IV (Electronic Commerce) was endeavouring to complete its work with a view to enabling review and approval of the text by the Commission in 2005.<sup>276</sup>

With regard to its work on security interests, the Commission had before it the reports of Working Group VI (Security Interests) on its fourth and fifth sessions and a report on the second joint session of Working Group V (Insolvency Law) and Working Group VI.<sup>277</sup> The Commission observed that Working Group VI had completed the second reading of the draft guide on secured transactions and noted with particular interest that

<sup>271</sup> For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17 (A/59/17)*, chap. I, sect. B.

<sup>272</sup> *Ibid.*, A/59/17.

<sup>273</sup> *Legislative Guide on Insolvency Law* (United Nations Publication, Sales No. E.05.V.10).

<sup>274</sup> A/CN.9/545 and A/CN.9/547.

<sup>275</sup> A/CN.9/544 and A/CN.9/552.

<sup>276</sup> A/CN.9/546 and A/CN.9/548.

<sup>277</sup> A/CN.9/543, A/CN.9/549 and A/CN.9/550.

the Working Group had agreed that publicity should be a precondition of the effectiveness of security rights against third parties and of ensuring protection of third parties. The Commission also noted the progress made by the Working Group in the coordination of its work on conflict of laws with the Hague Conference on Private International law and with the International Institute for the Unification of Private Law (Unidroit), which was preparing a text on securities, and with the World Bank, which was preparing principles and guidelines for effective insolvency and creditor rights systems.

In connection with possible future work in the area of public procurement, the Commission considered a note by the Secretariat<sup>278</sup> containing a summary of issues that might merit consideration in the review of the UNCITRAL Model Law on Procurement of Goods, Construction and Services,<sup>279</sup> to reflect new practices and requested the Working Group on Procurement to develop proposals for further consideration of the Commission. Some areas to be considered included the legislative treatment of electronic communications in public procurement, the procurement of services and remedies and enforcement.

Regarding the topic "Monitoring the implementation of the 1958 New York Convention",<sup>280</sup> the Commission requested the Secretariat to provide a preliminary analysis of replies received to the questionnaire sent to States relating to the legal regime in their jurisdictions governing the recognition and enforcement of foreign awards.

With regard to case law on UNCITRAL texts (CLOUT) and digests of case law, the Commission observed that 42 issues of CLOUT arising from 489 cases relating to the United Nations Convention on Contracts for the International Sale of Goods, 1980,<sup>281</sup> and the UNCITRAL Model Law on International Commercial Arbitration<sup>282</sup> had been prepared for publication. The Commission was also informed that the digest on court and arbitral decisions identifying trends in the interpretation of the Convention and on the Model Law had been prepared. The Commission requested that both digests be published in the six official languages of the United Nations and their adoption be promoted as a reference tool for judges, arbitrators, practitioners, academics and Government officials so that case law relating to UNCITRAL texts could be used more efficiently.

### (b) General Assembly

On 2 December 2004, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 58/75,<sup>283</sup> in which it took note of the report of the Commission on the work of its thirty-seventh session and commended the Commission for the progress made in its work on insolvency law, arbitration, secured transactions, electronic contracting, transport law, procurement law and the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.

<sup>278</sup> A/CN.9/539 and Add.1.

<sup>279</sup> *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

<sup>280</sup> For the text of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see United Nations, *Treaty Series*, vol. 330, p. 3.

<sup>281</sup> United Nations, *Treaty Series*, vol. 1489, p. 3.

<sup>282</sup> *Yearbook of the United Nations Commission on International Trade Law*, vol. XVI: 1985 (United Nations publication, Sales No. 87.V.4), annex I.

<sup>283</sup> The resolution was adopted without a vote.

## 17. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the fifty-ninth session of the General Assembly, the Sixth Committee, in addition to the topics concerning the International Law Commission and the United Nations Commission on International Trade Law, discussed above, considered a wide range of other topics. The work of the Sixth Committee and of other related subsidiary organs is described below, together with the relevant resolutions and decisions of the General Assembly adopted during 2004.<sup>284</sup> The resolutions of the General Assembly described in this section, unless otherwise indicated, were adopted during its fifty-ninth session on 2 December 2004 on the recommendation of the Sixth Committee<sup>285</sup> and without a vote.

### (a) Nationality of natural persons in relation to the succession of States

#### (i) *Sixth Committee*

The Sixth Committee considered this item at its 15th and 26th meetings on 28 October and on 17 November 2004, respectively.<sup>286</sup>

#### (ii) *General Assembly*

In its resolution 59/34, the General Assembly reiterated its invitation to Governments to take into account the provisions of the articles on nationality of natural persons in relation to the succession of States contained in the annex to resolution 55/153 of 12 December 2000.<sup>287</sup> It encouraged States to consider at the regional or subregional levels, the elaboration of legal instruments regulating these questions with a view, in particular, to preventing the occurrence of statelessness as a result of State succession. Furthermore, the General Assembly invited Governments to submit comments concerning the advisability of elaborating a legal instrument on this topic, including the avoidance of statelessness as a result of a succession of States.

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<sup>284</sup> For further information and documents regarding the work of the Sixth Committee and the other related subsidiary organs of the General Assembly mentioned in this section, see [www.un.org/law/lindex.htm](http://www.un.org/law/lindex.htm).

<sup>285</sup> The Sixth Committee adopts draft resolutions which are recommended for adoption by the General Assembly. These resolutions are contained in the reports of the Sixth Committee to the General Assembly on the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation and the consideration of the items by the Sixth Committee.

<sup>286</sup> For the report of the Sixth Committee, see A/59/504. For the summary records, see A/C.6/59/SR.15 and 26.

<sup>287</sup> These articles were adopted by the International Law Commission during its fifty-first session in 1999.

**(b) Responsibility of States for internationally wrongful acts**

*(i) Sixth Committee*

The Sixth Committee considered this item at its 15th, 16th, 25th and 26th meetings, on 28 and 29 October and on 9 and 17 November 2004.<sup>288</sup>

*(ii) General Assembly*

In its resolution 59/35, the General Assembly commended the articles on responsibility of States for internationally wrongful acts<sup>289</sup> to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action and requested the Secretary-General to invite Governments to submit their written comments on any future action regarding these articles. The Assembly also requested the Secretary-General to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard.

**(c) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts**

*(i) Sixth Committee*

The Sixth Committee considered this item at its 16th and 23rd meetings, on 29 October and 8 November 2004.<sup>290</sup> For its consideration of the matter, the Committee had before it the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts.<sup>291</sup>

*(ii) General Assembly*

In its resolution 59/36, the General Assembly recalled the entry into force, on 9 March 2004, of the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999.<sup>292</sup> It affirmed the necessity of making the implementation of international humanitarian law more effective and requested the Secretary-General to submit to the General Assembly at its sixty-first session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, *inter alia*, with respect to its dissemination and full implementation at the national level,

<sup>288</sup> For the report of the Sixth Committee, see A/59/505. For the summary records, see A/C.6/59/SR.15, 16, 25 and 26.

<sup>289</sup> General Assembly resolution 56/83 of 12 December 2001, annex. This articles were adopted by the International Law Commission during its fifty-third session in 2001.

<sup>290</sup> For the report of the Sixth Committee, see A/59/506. For the summary records, see A/C.6/59/SR.16 and 23.

<sup>291</sup> A/59/321.

<sup>292</sup> United Nations, *Treaty Series*, vol. 2253, p. 212.

based on information received from Member States and the International Committee of the Red Cross.

**(d) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives**

*(i) Sixth Committee*

The Sixth Committee considered this item at its 5th, 14th and 16th meetings, on 13, 26 and 29 October 2004.<sup>293</sup> For its consideration of the item, the Committee had before it the report of the Secretary-General.<sup>294</sup>

*(ii) General Assembly*

In its resolution 59/37, the General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and their officials, and emphasized that such acts can never be justified. It called upon all States to take certain steps to ensure the protection, security and safety of such missions, representatives and officials. Furthermore, the General Assembly called upon States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of these missions or the security of their representatives and officials, to make use of the means available for peaceful settlement of disputes, including the good offices of the Secretary-General, and requested the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned. The Assembly also requested the Secretary-General to submit to the General Assembly at its sixty-first session a report regarding certain matters elaborated in resolution 59/37.

**(e) Convention on jurisdictional immunities of States and their property**

*(i) Ad Hoc Committee on Jurisdictional Immunities of States and Their Property*

The Ad Hoc Committee on Jurisdictional Immunities of States and Their Property, established by the General Assembly in its resolution 55/150 of 12 December 2000, was reconvened in accordance with General Assembly resolution 58/74 of 9 December 2003. Its mandate consisted of formulating a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property, which would contain the results already adopted by the Ad Hoc Committee. The Ad Hoc Committee met from 1 to 5 March 2004.<sup>295</sup>

<sup>293</sup> For the report of the Sixth Committee, see A/59/507. For the summary records, see A/C.6/59/SR.5, 14 and 16.

<sup>294</sup> A/59/125 and Add. 1.

<sup>295</sup> For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 22 (A/59/22)*.

At its 8th plenary meeting, the Ad Hoc Committee decided to recommend to the General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property and that the General Assembly include in its resolution adopting the draft Convention the general understanding that it does not cover criminal proceedings.

(ii) *Sixth Committee*

The Committee considered the item at its 13th, 14th, 21st and 25th meetings, on 25 and 26 October and on 5 and 9 November 2004.<sup>296</sup>

(iii) *General Assembly*

In its resolution 59/38, the General Assembly, stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property,<sup>297</sup> and requested the Secretary-General as depositary to open it for signature. Furthermore, the General Assembly agreed with the general understanding reached in the Ad Hoc Committee that the Convention does not cover criminal proceedings and invited States to become parties to the Convention.

**(f) Report of the Committee on Relations with the Host Country**

(i) *Committee on Relations with the Host Country*

The Committee on Relations with the Host Country, established by General Assembly resolution 2819 (XXVI) of 15 December 1971, deals with a wide range of issues concerning the relationship between the United Nations and the United States as the host country, including questions pertaining to the security of the missions and their personnel; privileges and immunities; immigration and taxation; housing, transportation and parking; insurance, education, and health; and public relations issues with New York as the host city. In accordance with General Assembly resolution 58/78 of 9 December 2003, the Committee reconvened in 2004 and held three meetings; its 220th meeting on 29 April 2004, its 221st meeting on 26 July 2004 and its 222nd meeting on 13 October 2004.<sup>298</sup>

During its 2004 session, the Committee considered the following four topics: transportation: use of motor vehicles, parking and related matters; acceleration of immigration and customs procedures; entry visas issued by the host country; and host country travel regulations. At its 222nd meeting, it approved a number of conclusions and recommendations, including in relation to the observance of privileges and immunities; the functioning of the parking programme of diplomatic vehicles; the issuance of entry visas to represen-

<sup>296</sup> For the report of the Sixth Committee, see A/59/508. For the summary records, see A/C.6/59/SR.13, 14, 21 and 25.

<sup>297</sup> The Convention is reproduced in chapter IV of the present publication.

<sup>298</sup> For the report of the Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 26* (A/59/26).



tatives of Member States; the issuance of travel regulations with regard to personnel of certain missions and staff of the Secretariat; and the importance of permanent missions, their personnel and Secretariat personnel meeting their financial obligations.

(ii) *Sixth Committee*

The Sixth Committee considered the report of the Host Country Committee at its 26th meeting, on 17 November 2004.<sup>299</sup>

(iii) *General Assembly*

In its resolution 59/42, the General Assembly endorsed the recommendations and conclusions of the Host Country Committee contained in paragraph 26 of its report<sup>300</sup> and requested the host country to continue to take all measures necessary to prevent any interference with the functioning of missions. It noted that the Committee had conducted an initial detailed review of the implementation of the Parking Programme for Diplomatic Vehicles with a view to addressing the problems experienced by some permanent missions during the first year of the Programme and ensuring its proper implementation, and that it should remain seized of the matter. It further noted that during the reporting period some travel restrictions previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities were removed, and requested the host country to consider removing the remaining travel restrictions, and in that regard noted the positions of affected States, of the Secretary-General and of the host country. The Assembly requested the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country and requested the Committee to continue its work, in conformity with General Assembly resolution 2819 (XXVI).

**(g) International Criminal Court**

(i) *Sixth Committee*

The Sixth Committee considered this item at its 6th and 27th meetings, on 14 October and on 19 November 2004.<sup>301</sup>

(ii) *General Assembly*

During the resumed fifty-eighth session, on 13 September 2004, the General Assembly adopted, without reference to a Main Committee, resolution 58/318<sup>302</sup> entitled “International Criminal Court.” In this resolution, the General Assembly approved the draft Rela-

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<sup>299</sup> For the report of the Sixth Committee, see A/59/511. For the summary records, see A/C.6/59/SR. 26.

<sup>300</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 26 (A/59/26)*.

<sup>301</sup> For the report of the Sixth Committee, see A/59/512. For the summary records, see A/C.6/59/SR.6 and 27.

<sup>302</sup> The resolution was adopted without a vote.

tionship Agreement between the United Nations and the International Criminal Court and decided to apply the Relationship Agreement provisionally, pending its formal entry into force.<sup>303</sup>

During its fifty-ninth session, the General Assembly adopted resolution 59/43, in which it called upon all States that are not yet parties to the Rome Statute of the International Criminal Court, 1998,<sup>304</sup> to consider ratifying or acceding to it without delay, and encouraged efforts aimed at promoting awareness of the results of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from 15 June to 17 July 1998, the provisions of the Statute and the process leading to the establishment of the International Criminal Court. Furthermore, the Assembly called upon all States to consider becoming parties to the Agreement on the Privileges and Immunities of the International Criminal Court, 2002,<sup>305</sup> without delay.

### (h) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

#### (i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*

At its twenty-ninth session, the General Assembly decided to establish an Ad Hoc Committee on the Charter of the United Nations to consider, *inter alia*, any specific proposals that Governments might make with a view to enhancing the ability of the United Nations to achieve its purposes as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter.<sup>306</sup> At its thirtieth session, the Assembly decided to reconvene the Ad Hoc Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.<sup>307</sup> Since the thirtieth session, the Special Committee has been reconvened every year and in 2004, pursuant to General Assembly resolution 58/248 of 23 December 2003, it met from 29 March to 8 April. The Special Committee held two meetings, the 245th meeting on 29 March, and the 246th meeting on 7 April. In addition, its Working Group of the Whole held seven meetings.<sup>308</sup>

The issues considered by the Special Committee at its 2004 session were, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by sanctions, peaceful settlement of disputes, proposals concern-

<sup>303</sup> The agreement is reproduced in chapter IV of the present publication and is published in the United Nations, *Treaty Series*, vol. 2283, p. 196.

<sup>304</sup> United Nations, *Treaty Series*, vol. 2187, p. 3.

<sup>305</sup> United Nations, *Treaty Series*, vol. 2271, p. 3.

<sup>306</sup> General Assembly resolution 3349 (XXIX) of 17 December 1974.

<sup>307</sup> General Assembly resolution 3499(XXX) of 15 December 1975.

<sup>308</sup> For the report of the Special Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33 (A/59/33)*.

ing the Trusteeship Council, the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and working methods of the Special Committee and identification of new subjects. In its report, the Special Committee made several recommendations to the General Assembly.<sup>309</sup> In relation to the topic on assistance to third States affected by sanctions, the Special Committee recommended, *inter alia*, that the Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the meeting of the *ad hoc* expert group convened pursuant to resolution 52/162<sup>310</sup> and that it should address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of various General Assembly resolutions on this issue. With regard to the topic on the *Repertory* and the *Repertoire*, the Special Committee recommended that the Assembly review the possibility of establishing, at its fifty-ninth session, a trust fund for the preparation, updating and publication of the *Repertory*, which should accept solely voluntary contributions by States and private institutions and individuals.

#### (ii) *Sixth Committee*

The Sixth Committee considered the report of the Special Committee at its 3rd, 4th, 6th, 24th and 26th meetings, on 7, 8 and 14 October and 8 and 17 November 2004.<sup>311</sup> The Committee took into consideration a number of documents including the reports of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*,<sup>312</sup> and on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.<sup>313</sup>

#### (iii) *General Assembly*

In its resolution 59/44 entitled “Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization”, the General Assembly took note of the report of the Special Committee and requested that it continue consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations; the question of implementation of the provision of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter; proposals concerning the Trusteeship Council; and ways and means of improving its working methods and enhancing its efficiency. The General Assembly also requested the Secretary-General to establish a trust fund to eliminate the backlog of the *Repertory of Practice of*

<sup>309</sup> *Ibid.*, para. 14.

<sup>310</sup> A/53/312.

<sup>311</sup> For the report of the Sixth Committee, see A/59/513. For the summary records, see A/C.6/59/SR.3, 4, 6, 24, and 26.

<sup>312</sup> A/59/189.

<sup>313</sup> A/59/334.

*United Nations Organs* and endorsed his efforts to eliminate the backlog of the *Repertoire of the Practice of the Security Council*.

Under the same item, the General Assembly also adopted resolution 59/45 on “Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions”. In this resolution, the General Assembly renewed its invitation to the Security Council to consider the establishment of further mechanisms or procedures for consultations under Article 50 of the Charter of the United Nations with third States which are or may be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council under Chapter VII of the Charter, with regard to a solution of those problems. In this context, the Council was also invited to consider appropriate ways and means for increasing the effectiveness of its methods and procedures applied in the consideration of requests by the affected States for assistance.

The Assembly further invited the Security Council, its sanctions committees and the Secretariat, as appropriate, to continue to ensure that, *inter alia*, (i) assessment reports include as part of their analysis the likely and actual unintended impact of the sanctions on third States and recommend ways in which the negative impact of sanctions can be mitigated; (ii) the Security Council, where economic sanctions have had severe effects on third States, is able to request the Secretary-General to consider appointing a special representative or dispatching fact-finding missions on the ground to undertake necessary assessments and to identify, as appropriate, possible ways of assistance; and (iii) the Council is able to consider establishing working groups to consider such situations.

The Assembly further requested the Secretary-General to pursue the implementation of various resolutions<sup>314</sup> on this item and to ensure that the competent units within the Secretariat develop the adequate capacity and appropriate modalities, technical procedures and guidelines to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions, to continue developing a possible methodology for assessing the adverse consequences actually incurred by such States and to explore innovative and practical measures of assistance to them.

### (i) Measures to eliminate international terrorism

#### (i) *Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*

The eighth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with General Assembly resolution 58/81 of 9 December 2003. The Ad Hoc Committee was requested to continue to elaborate a draft comprehensive convention on international terrorism; to continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism; and to keep on its agenda the

<sup>314</sup> General Assembly resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25 and 58/80.

question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Ad Hoc Committee held its 30th to 32th plenary meetings on 28 June, 1 July, and 2 July 2004.<sup>315</sup> In addition, the Coordinators of the two draft conventions held separate informal consultations with interested delegations and, at the 31st plenary meeting, presented to the Committee their oral reports on the results of those consultations.<sup>316</sup> At the same meeting, the Chairman of the Ad Hoc Committee also informed the Committee that while there had not been any specific proposal regarding the question of convening a high-level conference, some delegations had had informal contacts on that issue.

The Ad Hoc Committee, bearing in mind General Assembly resolution 58/81, decided to recommend that the Sixth Committee, at the fifty-ninth session of the General Assembly, consider establishing a working group, if appropriate, to continue the elaboration of the two draft conventions and to keep on its agenda the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

#### (ii) *Sixth Committee*

The Sixth Committee considered this item at its 1st, 7th to 10th and 26th meetings, on 4 and from 18 to 20 October and on 17 November 2004. The documents before the Committee included the report of the Secretary-General on measures to eliminate international terrorism.<sup>317</sup>

Pursuant to paragraph 16 of General Assembly resolution 58/81, the Committee, at its 1st meeting, established a Working Group to continue the elaboration of a draft comprehensive convention on international terrorism with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism and to keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.<sup>318</sup> The Working Group held two plenary meetings and the Coordinators of the two draft conventions also held informal consultations. In addition, the Chairman invited interested delegations to approach him on the question of convening a high level conference. At the 2nd meeting of the Working Group, the Coordinators presented their oral reports on the results of the informal consultations<sup>319</sup> and the Chairman informed the Working Group that in his contacts with several delegations on the question of convening a high-level conference, they had informed him that consultations on this question were continuing at a political level in their capitals.

<sup>315</sup> For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 37 (A/59/37)*.

<sup>316</sup> *Ibid.*, annex II.

<sup>317</sup> A/59/210 and Corr.1.

<sup>318</sup> For the report of the Working Group, see A/C.6/59/L.10.

<sup>319</sup> *Ibid.*, annex I.

The Working Group referred its report to the Sixth Committee, in which it decided, bearing in mind General Assembly resolution 58/81, to recommend that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

At the 7th meeting of the Sixth Committee, the Chairman of the Ad Hoc Committee and of the Working Group introduced the reports of the two bodies.

### (iii) *General Assembly*

In its resolution 59/46, the General Assembly reaffirmed the Declaration on Measures to Eliminate International Terrorism<sup>320</sup> and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism,<sup>321</sup> and called upon all States to implement them. The General Assembly further called upon States to take various measures to prevent and combat international terrorism and reminded States of their obligations under relevant international conventions and protocols and Security Council resolutions, including Security Council resolution 1373 (2001), to ensure that perpetrators of terrorist acts are brought to justice. In this regard, the Assembly also reaffirmed that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter, international law and relevant international conventions.

Furthermore, the General Assembly also noted the progress attained in the elaboration of the draft comprehensive convention on international terrorism and the draft international convention for the suppression of acts of nuclear terrorism. It decided that the Ad Hoc Committee should, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and resolve the outstanding issues relating to the elaboration of the draft international convention for the suppression of acts of nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Assembly further requested the Secretary-General to make a comprehensive inventory of the response of the Secretariat to terrorism as part of his annual report on measures to eliminate international terrorism.

### (j) **Scope of legal protection under the Convention on Safety of United Nations and Associated Personnel**

#### (i) *Ad Hoc Committee on the Scope of Legal protection under the Convention on the Safety of United Nations and Associated Personnel*

The third session of the Ad Hoc Committee, established by General Assembly resolution 56/89 of 12 December 2001, was convened pursuant to General Assembly resolution

<sup>320</sup> General Assembly resolution 49/60 of 9 December 1994, annex.

<sup>321</sup> General Assembly resolution 51/210 of 17 December 1996, annex.

58/82 of 9 December 2003, with a mandate to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994,<sup>322</sup> including, *inter alia*, by means of a legal instrument. The Ad Hoc Committee met from 12 to 16 April 2004 and held its 5th to 7th plenary meetings on 12, 14, and 16 April 2004.<sup>323</sup> In addition, the Working Group of the Whole also held several meetings. The Committee had before it, *inter alia*, two proposals, submitted by New Zealand and Costa Rica, respectively.<sup>324</sup> New Zealand's proposal contained a draft text of an instrument expanding the scope of legal protection under the 1994 Convention. Costa Rica's proposal contained a text on the relationship between the 1994 Convention and international humanitarian law.

The Ad Hoc Committee decided to recommend to the General Assembly that its mandate be renewed for 2005 in order to continue its work to expand the scope of legal protection under the 1994 Convention, including, *inter alia*, by means of a legal instrument.

#### (ii) *Sixth Committee*

The Sixth Committee considered the item at its 10th, 13th and 26th meetings, on 20 and 25 October and 17 November 2004.<sup>325</sup> The documents before the Sixth Committee included the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, 1994.<sup>326</sup>

At its 1st meeting, on 4 October, the Sixth Committee established a Working Group to continue the work of the Ad Hoc Committee.<sup>327</sup> The Working Group held four meetings and had before it, *inter alia*, the Chairman's text<sup>328</sup> on an instrument expanding the scope of legal protection under the 1994 Convention, which was the outcome of inter-sessional informal consultations and bilateral contacts, building upon work accomplished during previous discussions. The Working Group agreed to use the Chairman's text as the basis of work for current and future discussions concerning the expansion of the scope of legal protection under the 1994 Convention, while it was understood that this would not limit the right of delegations to make suggestions thereon. Substantive discussions were subsequently held on the expansion of the scope of legal protection under the Convention and on the proposal concerning the relationship between the Convention and international humanitarian law submitted by Costa Rica during the third session of the Ad Hoc Committee. The Working Group referred its report to the Sixth Committee, in which it recommended that the Ad Hoc Committee be reconvened with a mandate to expand the scope of legal protection under the 1994 Convention, including, *inter alia*, by means of a legal instrument. In addition, it also recommended that the Chairman's text be used as the basis

<sup>322</sup> United Nations, *Treaty Series*, vol. 2051, p. 363.

<sup>323</sup> For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 52 (A/59/52)*.

<sup>324</sup> *Ibid.*, annexes A and B, respectively.

<sup>325</sup> For the report of the Sixth Committee, see A/59/515 and Corr.1. For the summary records, see A/C.6/59/SR.10, 13 and 26.

<sup>326</sup> A/59/226.

<sup>327</sup> For the report of the Working Group, see A/C.6/59/L.9.

<sup>328</sup> *Ibid.*, annex I A.

of the work of the Ad Hoc Committee and that the proposal by Costa Rica be considered by the Ad Hoc Committee separately.

At the 10th meeting of the Sixth Committee, on 20 October 2004, the Chairman of the Ad Hoc Committee and of the Working Group introduced the reports of the two bodies.

### (iii) *General Assembly*

In its resolution 59/47, the General Assembly urged States to take all necessary measures, in accordance with their international obligations, to prevent crimes against United Nations and associated personnel from occurring, and to ensure that such crimes do not go unpunished and that the perpetrators of such crimes are brought to justice. It recommended that the Secretary-General continue to seek the inclusion of, and that host countries include, key provisions of the Convention in future as well as, if necessary, in existing status-of-forces, status-of-mission and host country agreements. It further recommended that the Secretary-General advise the Security Council or the General Assembly, as appropriate, where in his assessment circumstances would support a declaration of exceptional risk for the purposes of article 1 (c) (ii) of the Convention. It also noted that the Secretary-General had prepared a standardized provision for incorporation in the agreements concluded between the United Nations and humanitarian non-governmental organizations or agencies for the purposes of clarifying the application of the Convention to persons deployed by those organizations or agencies, and requested him to make available to Member States the names of organizations or agencies that had concluded such agreements. It requested the Secretary-General to report to the Assembly at its sixtieth session on the measures taken to implement the resolution.

Furthermore, the General Assembly decided that the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel should reconvene from 11 to 15 April 2005, with a mandate to expand the scope of legal protection under the Convention, including, *inter alia*, by means of a legal instrument.

## (k) **International convention against the reproductive cloning of human beings**

### (i) *Sixth Committee*

The Sixth Committee considered this matter at its 11th, 12th and 27th meetings, on 21 and 22 October and on 19 November 2004.<sup>329</sup> In light of the divergent views among Member States on the future mandate of the Ad Hoc Committee on an international convention against the reproductive cloning of human beings,<sup>330</sup> the Chairman of the Sixth Committee announced that, on the basis of informal consultations with interested delegations, it was being proposed that the Sixth Committee establish a working group to

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<sup>329</sup> For the report of the Sixth Committee, see A/59/516 and Corr.1. For the summary records, see A/C.6/59/SR.11, 12 and 27.

<sup>330</sup> See, for example, draft resolutions A/C.6/59/L.2 and A/C.6/59/L.8.



finalize the text of a United Nations declaration on human cloning, on the basis of draft resolution (A/C.6/59/L.26) and to report to the Sixth Committee during the current fifty-ninth session. The working group was to meet on 14, 15 and 18 February 2005 and the Sixth Committee in the afternoon of 18 February, to consider and take action on the report of the working group. At the same meeting, on the basis of the Chairman's proposal, the Sixth Committee adopted a decision to establish such a working group.

## (ii) *General Assembly*

In its decision 59/547 of 23 December 2004,<sup>331</sup> adopted on the recommendation of the Sixth Committee, the General Assembly decided to establish a Working Group to finalize the text of a United Nations declaration on human cloning on the basis of a draft resolution,<sup>332</sup> and to report to the Sixth Committee during the fifty-ninth session. Further action on the matter, including meetings of the Working Group, took place in the resumed fifty-ninth session in 2005.

## (I) **Observer status in the General Assembly**

### (i) *Sixth Committee*

The Sixth Committee considered requests for observer status in the General Assembly by the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization, the Economic Community of West African States, the Organisation of Eastern Caribbean States, and the South Asian Association for Regional Cooperation.

The question of observer status for the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization and the Economic Community of West African States was considered at the Sixth Committee's 2nd and 3rd meetings on 5 and 7 October 2004.<sup>333</sup> The observer status for the Organisation of Eastern Caribbean States was considered at the Committee's 13th and 16th meetings.<sup>334</sup> Lastly, the question of the observer status of the South Asian Association for Regional Cooperation was considered at the 19th and 21st meetings of the Committee on 3 and 5 November 2004.<sup>335</sup>

<sup>331</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49 (A/59/49)*, vol. II.

<sup>332</sup> A/C.6/59/L.26.

<sup>333</sup> For the reports of the Sixth Committee, see A/59/517–520. For the summary records, see A/C.6/59/SR.2 and 3.

<sup>334</sup> For the report of the Sixth Committee, see A/59/521. For the summary records, see A/C.6/59/SR.13 and 16.

<sup>335</sup> For the summary records, see A/C.6/59/SR.19 and 21. For the report of the Sixth Committee, see A/59/522.

(ii) *General Assembly*

The General Assembly adopted resolutions 59/48, 59/49, 59/50, 59/51, 59/52 and 59/53, in which it granted observer status to the Shanghai Cooperation Organization, the Southern African Development Community, the Collective Security Treaty Organization, the Economic Community of West African States, the Organization of Eastern Caribbean States and the South Asian Association for Regional Cooperation, respectively.

## 18. Advisory opinion of the International Court of Justice

On 8 December 2003, during its tenth emergency special session, the General Assembly adopted resolution ES-10/14 entitled “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory.” In this resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to urgently render an advisory opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

On 9 July 2004, the International Court of Justice delivered its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.<sup>336</sup> The Court replied to the question posed by the General Assembly as follows:

A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law;

B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;

C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;

D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

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<sup>336</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

E. The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.”

On 20 July 2004, the General Assembly adopted, without reference to a Main Committee, resolution ES-10/15<sup>337</sup> entitled “Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem”, in which it, *inter alia*, demanded that Israel, the occupying Power, comply with its legal obligations as mentioned in the Advisory Opinion. The Assembly called upon all States Members of the United Nations to comply with their legal obligations as mentioned in the Advisory Opinion and requested the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the Advisory Opinion.<sup>338</sup>

Furthermore, the General Assembly called upon both the Government of Israel and the Palestinian Authority to immediately implement their obligations under the road map,<sup>339</sup> in cooperation with the Quartet, as endorsed by Security Council resolution 1515 (2003), to achieve the vision of two States living side by side in peace and security and emphasized that both Israel and the Palestinian Authority are under an obligation scrupulously to observe the rules of international humanitarian law.

In addition, the General Assembly called upon all States parties to the Fourth Geneva Convention to ensure respect by Israel for the Convention, and invited Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and to report to the General Assembly on the matter, including with regard to the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention.

## 19. Ad hoc international criminal tribunals<sup>340</sup>

### International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR)

#### (i) Election of permanent judges of the ICTY

On 19 November 2004,<sup>341</sup> the General Assembly, pursuant to article 13 *bis* of the statute of the ICTY,<sup>342</sup> elected 14 permanent judges for a four-year term of office, beginning on 17 November 2005. Those elected were Mr. Carmel Agius (Malta); Mr. Jean-Claude

<sup>337</sup> The resolution was adopted by recorded vote of 150 in favor to 6 against, with 10 abstentions.

<sup>338</sup> See also chapter VI A of the present publication, under the section entitled “Miscellaneous”.

<sup>339</sup> S/2003/529, annex.

<sup>340</sup> This section covers the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were the subject of resolutions of the Security Council and the General Assembly. Further information regarding the Judgements and Decisions of the ICTY and ICTR is contained in chapter VII of the present publication.

<sup>341</sup> See General Assembly decision 59/406. *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 49 (A/59/49)*, vol. II.

<sup>342</sup> The statute of the ICTY is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) (S/25704 and Add.1). As at 31 December 2004, the statute had been

Antonetti (France); Mr. Iain Bonomy (United Kingdom); Mr. O-gon Kwon (Republic of Korea); Mr. Liu Daqun (China); Mr. Theodor Meron (United States); Mr. Bakone Melema Moloto (South Africa); Mr. Alphonsus Martinus Maria Orie (Netherlands); Mr. Kevin Horace Parker (Australia); Mr. Fausto Pocar (Italy); Mr. Patrick Lipton Robinson (Jamaica); Mr. Wolfgang Schomburg (Germany); Mr. Mohamed Shahabuddeen (Guyana); and Ms. Christine Van Den Wyngaert (Belgium).

(ii) *General Assembly*

On 23 December 2004, the General Assembly adopted, on the recommendation of the Fifth Committee, resolution 59/273<sup>343</sup> on “Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994”. The General Assembly welcomed the efforts of the Tribunal to assist the Government of Rwanda in strengthening its judiciary, and requested the Tribunal to increase its capacity-building efforts for the judiciary of Rwanda, including through the recruitment of Rwandan legal professionals and training and attachment programmes, in view of the intention to transfer cases for prosecution to Rwanda as from 2005. It recognized the importance of carrying out an effective outreach programme within the overall mandate of the Tribunal and its Completion Strategy, and requested the Tribunal, in accordance with its mandate, to develop and implement outreach programmes that are proactive, utilizing available resources optimally, and that contribute to the reconciliation process by effectively developing an increased understanding of its work among Rwandans.

(iii) *Security Council*

By resolution 1534 adopted on 26 March 2004, the Security Council, acting under Chapter VII of the Charter of the United Nations, reaffirmed the necessity of trial of persons indicted by the ICTY and ICTR. It emphasized the importance of fully implementing the Completion Strategies, as set out in paragraph 7 of resolution 1503 (2003) that called on the ICTY and ICTR to take all possible measures to complete the investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008 and to complete all work in 2010. The Council called on the ICTY and ICTR Prosecutors to review the case load of the ICTY and ICTR, respectively, in particular with a view to determining which cases should be proceeded with and which should be transferred to competent national jurisdictions and called further on each Tribunal, in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being the most responsible for crimes within the jurisdiction of the relevant Tribunal as set out in resolution 1503 (2003). Furthermore, the Security Council recalled that the strengthening of competent national judicial systems is crucially important to

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amended by Security Council resolutions 827 (1993), 1166 (1998), 1329 (2000), 1411 (2002), 1431 (2002) and 1481 (2003).

<sup>343</sup> The resolution was adopted without a vote.

the rule of law in general and to the implementation of the ICTY and ICTR Completion Strategies in particular.

## **B. GENERAL REVIEW OF THE LEGAL ACTIVITIES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS**

### **1. Universal Postal Union**

Following a decision by the Bucharest Congress, the Universal Postal Union (UPU) acceded to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986,<sup>344</sup> on 19 October 2004.

The Congress further established a UPU policy on extraterritorial offices of exchange (ETOE). Under the policy, items sent from ETOEs are to be considered commercial items not subject to UPU Acts, unless the administration of destination has agreed to apply the Acts to the items it receives from them. Furthermore, the dispatch of items via an ETOE should no longer result in a decrease in the remuneration the destination country would receive for their delivery.

### **2. International Labour Organization**

#### **(a) Resolutions submitted in accordance with article 17 of the Standing Orders of the Conference<sup>345</sup>**

At the 92nd session of the International Labour Conference, Geneva, the following draft resolutions were submitted in accordance with article 17 of the Standing Orders of the Conference. Of these, a resolution on the promotion of gender equality, pay equity and maternity protection was adopted.<sup>346</sup>

(a) Resolution concerning the strengthening of the role of the International Labour Organization (ILO) in supporting workers and employers in Palestine and the other occupied Arab territories as a result of continued Israeli occupation and aggressive practices;

(b) Resolution concerning the role of ILO in efforts to secure global peace, justice and security around the world;

(c) Resolution concerning pay equity;

(d) Resolution concerning ILO's efforts to combat poverty;

(e) Resolution concerning the social responsibilities of business;

(f) Resolution concerning the application of international labour standards to international civil servants;

<sup>344</sup> A/CONF.129/15.

<sup>345</sup> ILC92-PR1-2004-05-0238-1-En.doc.

<sup>346</sup> ILC92-PR18-257-En.doc. The resolutions concerning pay equity (c), the promotion of gender equality (m), and the fourth anniversary of the Maternity Protection Convention, 2000 (n) were combined to become a new resolution on the promotion of gender equality, pay equity and maternity protection.

- (g) Resolution concerning older workers and employment and social protection;
- (h) Resolution concerning peace;
- (i) Resolution concerning gender-equal pay;
- (j) Resolution concerning poverty;
- (k) Resolution concerning corporate social responsibility;
- (l) Resolution concerning democratic values, good governance and transparency in a global economy and their impact on the world of work, competitiveness and sustainable development;
- (m) Resolution concerning the promotion of gender equality;
- (n) Resolution concerning the fourth anniversary of the Maternity Protection Convention, 2000 (No. 183);
- (o) Resolution concerning the role of ILO in conflict prevention and resolution; and
- (p) Resolution concerning corporate social responsibility.

### **(b) Standing Orders questions**

At its 289th session (March 2004), the Governing Body of the International Labour Organization recommended that the International Labour Conference, for a trial period of at least three years, replace the provisions of its Standing Orders concerning the Credentials Committee with new provisions. These provisions are the result of a process of deliberation requested by the Credentials Committee at the 90th and 91st sessions of the Conference with a view to improving its work and effectiveness.<sup>347</sup>

### **(c) Withdrawal of 16 International Labour Recommendations<sup>348</sup>**

The International Labour Conference, at its 92nd session on 1 June 2004 decided to withdraw the following 16 International Labour Recommendations:

- (a) Withdrawal of the Reciprocity of Treatment Recommendation, 1919 (No. 2);
- (b) Withdrawal of the Maternity Protection (Agriculture) Recommendation, 1921 (No. 12);
- (c) Withdrawal of the Living-in Conditions (Recommendation), 1921 (No. 16);
- (d) Withdrawal of the Weekly Rest (Commerce) Recommendation, 1921 (No. 18);
- (e) Withdrawal of the Utilisation of Spare Time Recommendation, 1924 (No. 21);
- (f) Withdrawal of the Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26);
- (g) Withdrawal of the Power-Driven Machinery Recommendation, 1929 (No. 32);

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<sup>347</sup> Third report of the Credentials Committee, ILC, 90th session, Provisional Record No. 5D; and Second report, ILC, 91st session, Provisional Record No. 5C. As regards examination of the question by the Governing Body, see also the following documents: GB.286/LILS/3, GB.286/13/1, GB.288/LILS/4, GB.288/10/1 and GB.289/LILS/1/1.

<sup>348</sup> ILC, Provisional Record 4–2A, 92nd session, Geneva, 2004.

(h) Withdrawal of the Protection Against Accident (Dockers) Reciprocity Recommendation, 1929 (No. 33);

(i) Withdrawal of the Protection Against Accidents (Dockers) Consultation of Organizations Recommendation, 1929 (No. 34);

(j) Withdrawal of the Forced Labour (Regulation) Recommendation, 1930 (No. 36);

(k) Withdrawal of the Invalidity, Old-age, Survivors' Insurance Recommendation, 1933 (No. 43);

(l) Withdrawal of the Elimination of Recruiting Recommendation, 1936 (No. 46);

(m) Withdrawal of the Contracts Employment (Indigenous Workers) Recommendation, 1939 (No. 58);

(n) Withdrawal of the Social Policy in Dependant Territories Recommendation, 1944 (No. 70);

(o) Withdrawal of the Social Policy in Dependant Territories (Supplementary Provisions) Recommendation, 1945 (No. 74); and

(p) Withdrawal of the Minimum Age (Coal Mines) Recommendation, 1953, (No. 96).

**(d) Follow-up activities by the International Labour Office under the ILO Declaration on Fundamental Principles and Rights at Work<sup>349</sup>**

Delegates at the 92nd session of the International Labour Conference were informed of the activities undertaken in pursuit of the action plans approved by the Governing Body in November 2000 on freedom of association and the effective recognition of the right to collective bargaining,<sup>350</sup> in November 2001 on forced or compulsory labour,<sup>351</sup> and in November 2003 on discrimination.<sup>352</sup>

**(e) Adoption of the Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning**

The International Labour Conference, at its 92nd session, on 1 June 2004, adopted the Human Resources Development Recommendation, 2004.<sup>353</sup>

<sup>349</sup> ILC, 86th session, Geneva, 1998, *Record of Proceedings*, vol. I, Nos. 20, 20A and 22, and vol. II, p. 20; *Official Bulletin* of the ILO, vol. LXXXI, 1998, Series A, No. 2.

<sup>350</sup> GB.279/TC/3.

<sup>351</sup> GB.282/TC/5.

<sup>352</sup> GB.288/TC/4.

<sup>353</sup> ILC, Provisional Record, 92nd Session 20 A, Geneva, 2004.

**(f) Ratification and promotion of fundamental ILO Conventions<sup>354</sup>**

In July 2004, the Director-General sent a circular letter to Governments of countries that had not ratified all the fundamental Conventions, asking them to indicate their position with regard to these Conventions and in particular whether or not their position had changed since their previous communication.

**(g) Amendments to the Staff Regulations**

Since the reorganization of the Office in line with strategic planning in 1999, a number of terminological changes occurred at senior-level management positions, in particular the introduction of Executive Directors and Regional Directors, instead of the former Deputy Directors-General and Assistant Directors-General. These changes were, however, never reflected in the Staff Regulations. Thus, in accordance with article 14, paragraph 7, of the Staff Regulations, at the 291st session (November 2004) of the Governing Body, the Director-General proposed to reflect consistently the new terminology throughout the legislation.

**(h) General status report on ILO action concerning discrimination in employment and occupation<sup>355</sup>**

*(i) Gender equality*

Gender equality was adopted as one of the Organization's operational objectives in the Programme and Budget proposals for 2004–2005. Indicators for this objective aim to measure the progress of ILO constituents in taking positive action to increase gender equality in the world of work. They focus on the ratification and application of four key international labour conventions for gender equality (elimination of discrimination, equal remuneration, maternity protection and workers with family responsibilities), as well as balanced representation of women and men at decision-making levels, including in ILO governance institutions, meetings and training activities.

*(ii) Racial, ethnic, religious, and social origin discrimination*

In 2004, ILO continued to cooperate with the Office of the United Nations High Commissioner for Human Rights with regard to the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The ILO Committee of Experts continued to address the situation of the Roma in relevant countries and the International Labour Office participated in meetings organized by

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<sup>354</sup> GB.291/LILS/4. The fundamental Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948; Right to Organise and Collective Bargaining Convention, 1949; Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957; Equal Remuneration Convention, 1951; Discrimination (employment and Occupation) Convention, 1958; Minimum Age Convention, 1973; and Worst Forms of Child Labour Convention, 1999.

<sup>355</sup> GB.289/LILS/3.



the Organization for Security and Cooperation in Europe and the World Bank on the Roma, highlighting the need to address their employment situation from an equality perspective.

(iii) *Discrimination and migrant workers*

The International Labour Office continued its activities to support the establishment of national frameworks for the prevention of discrimination against migrant workers. In Asia, various promotional and advisory activities concerning ILO standards on migrant workers contributed to raising the profile of migration for employment and trafficking and created further opportunities for dialogue on the relevant standards. An information guide entitled *Preventing discrimination, exploitation and abuse of women migrant workers* has been published. In preparation for the general discussion at the International Labour Conference in June 2004, the Office held a series of regional and subregional consultations on labour migration, commissioned case studies on the law and practice on labour migration in seven countries and collected and reviewed information on this issue through a questionnaire.

(iv) *Discrimination and indigenous and tribal peoples*

The Interregional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO) continued its work on projects in Africa and Asia. Community-level empowerment schemes have contributed to the elimination of discrimination against indigenous and tribal peoples, particularly in terms of access to employment and income generation, micro-credits, health and education, ancestral domains and policy-making processes.

(v) *Discrimination and workers of the occupied Arab territories*

At the 289th session of the Governing Body, the Director-General presented the regular report on the issue of discrimination and workers of the occupied Arab territories to the Conference. ILO continued to take steps to strengthen its technical cooperation programme aimed at creating sustainable jobs and future employment opportunities in the territories and reforming labour institutions, as well as seeking to facilitate social dialogue among constituents.

### 3. International Monetary Fund

(a) *Membership issues*

(i) *Accession to membership*

No new members joined the International Monetary Fund (IMF) in 2004 and the total membership remained at 184.

(ii) *Status and obligations under article VIII or article XIV of IMF's Articles of Agreement*

Under article VIII, sections 2 (a), 3, and 4, of IMF's Articles of Agreement, members of IMF may not, without IMF's approval, (i) impose restrictions on the making of payments and transfers for current international transactions; or (ii) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding these provisions, pursuant to article XIV, Section 2, of the Articles of Agreement, when a member joins IMF, it may notify IMF that it intends to avail itself of the transitional arrangements under article XIV that allow the member to maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a member, after it joins IMF, to introduce new restrictions on the making of payments and transfers for current international transactions without the approval of IMF.

Members that avail themselves of the transitional arrangements under article XIV, section 2, consult with IMF annually on the restrictions maintained thereunder. IMF generally encourages such members to remove these restrictions and to formally accept the obligations of article VIII, sections 2 (a), 3, and 4, where a member no longer maintains restrictions under article XIV, section 2, or the member's balance of payments position is sufficiently strong so as not to justify the retention of restrictions maintained under article XIV, section 2. Where necessary, and if requested by a member, IMF also provides technical assistance to help the member remove its exchange restrictions.

In 2004, five members, Cape Verde, Colombia, Iran (Islamic Republic of), Azerbaijan and Tajikistan, formally accepted the obligations of article VIII, sections 2 (a), 3, and 4. The total number of countries that had accepted these obligations as at 31 December 2004 was 163.

(iii) *Overdue financial obligations to the IMF*

At the end of December 2004, members with protracted arrears (i.e., financial obligations that are overdue by six months or more) to the IMF were Liberia, Somalia, the Sudan and Zimbabwe.

Article XXVI, section 2 (a), of IMF's Articles of Agreement provides that if "a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund". Declarations of ineligibility under article XXVI, section 2 (a), remained in effect at the end of December 2004 with respect to the four IMF members with protracted arrears.

(iv) *Suspension of voting rights and compulsory withdrawal from the IMF*

(a) Liberia's voting and related rights were suspended on 5 March 2003. The suspension remained in effect throughout 2004.

(b) Zimbabwe's voting and related rights were suspended on 6 June 2003. The suspension remained in effect throughout 2004. On 3 December 2003, the Executive Board of the IMF noted that Zimbabwe had been in continuous arrears to the IMF since Febru-

ary 2001 and had persisted in its failure to fulfil its obligations under IMF's Articles of Agreement after the expiration of a reasonable period following the decision of suspension, taken pursuant to article XXVI, section 2 (b). In view of these circumstances, the Executive Board noted that it intended to initiate promptly the compulsory withdrawal procedure pursuant to article XXVI, section 2 (c). This procedure was initiated on 6 February 2004, with the issuance of the Managing Director's complaint to the Executive Board.

## (b) Issues pertaining to voting and participation

### (i) *Liberia*

As a consequence of the suspension of Liberia's voting and related rights (as discussed above), the Governor and Alternate Governor for Liberia in the IMF ceased to hold office pursuant to paragraph 3 (a) of schedule L of IMF's Articles of Agreement. Accordingly, Liberia was not entitled to participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

### (ii) *Somalia*

In October 1992, the IMF found that there was no effective government for Somalia with which IMF could carry on its activities. Since then, the positions of the Governor and Alternate-Governor for Somalia in the IMF have been vacant and Somalia did not participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

### (iii) *Zimbabwe*

As a consequence of the suspension of Zimbabwe's voting and related rights (as discussed above), the Governor and Alternate Governor for Zimbabwe in the IMF ceased to hold office pursuant to paragraph 3 (a) of schedule L of IMF's Articles of Agreement. Accordingly, Zimbabwe was not entitled to participate in the 2004 Election of Executive Directors and was not represented at the 2004 IMF Annual Meeting.

## (c) IMF facilities

### (i) *Modifications to the Poverty Reduction and Growth Facility (PRGF) Trust and the Poverty Reduction and Growth Facility-Heavily Indebted Poor Countries (PRGF-HIPC) Trust Instruments*

#### a. Additional HIPC assistance ("Topping-up")

In April 2004, the Executive Board of the IMF decided to revise the PRGF-HIPC Trust Instrument in order to bring it in line with its discussion in 2001, i.e., additional debt relief would be allowed to countries reaching their completion point, but only so as to bring the ratio of the net present value of debt-to-exports to 150 per cent (or debt-to-fiscal revenue to 250 per cent), if the deterioration in the member's debt sustainability is

primarily attributable to a fundamental change in the member's economic circumstances due to exogenous factors.

**b. Extension of the sunset clause and modification of the eligibility criteria under the enhanced HIPC Initiative**

In October 2004, the Executive Board of the IMF decided to extend the HIPC sunset clause by another two years, to the end of 2006, and modified the eligibility criteria under the enhanced HIPC Initiative to limit the application of the extension of the sunset clause to the International Development Association and IMF's Poverty Reduction and Growth Facility-eligible countries that have not yet benefited from HIPC debt relief and are assessed to have external public debt in excess of the enhanced HIPC Initiative thresholds after full application of traditional debt relief mechanisms based on debt data from the end of 2004.

**c. Modification of the Poverty Reduction Strategy Paper (PRSP) architecture**

In November 2004, the Executive Board of the IMF decided to revise the PRGF Trust and the PRGF-HIPC Trust Instruments in order to make a number of changes in respect of the relationship between poverty reduction strategy (PRS) documents (i.e., interim PRSPs, PRSP preparation status reports, PRSPs, and annual progress reports), and IMF financial assistance under PRGF arrangements and decisions on debt relief under the HIPC Initiative. In particular, the Executive Board eliminated the requirement for an explicit endorsement of a PRS document in connection with financial assistance under PRGF arrangements and decisions under the HIPC Initiative. The amendments also consolidated and integrated into the PRGF Trust and PRGF-HIPC Trust Instruments the rules on PRS documents that had evolved over time outside these Instruments. Under the current framework, financial assistance under PRGF arrangements and HIPC Initiative decisions generally require that the member concerned has in place a satisfactory PRS set out in a PRS document that had been issued to the Executive Board normally within the previous 12 months and had been the subject of an analysis in a Joint Staff Advisory note, also issued to the Executive Board.

*(ii) Support for trade-related balance of payments adjustments*

In April 2004, the Executive Board of the IMF approved the establishment of a Trade Integration Mechanism (TIM) within IMF's existing facilities to clarify further how IMF will stand ready to help its members mitigate short-term balance of payments difficulties stemming from trade liberalization measures undertaken by other countries. Financing under the TIM is designed to address existing or anticipated balance of payments difficulties related to the implementation of the trade liberalization measures mentioned above. These measures would normally be of the type introduced under a World Trade Organization (WTO) agreement or measures taken outside the WTO context on a non-discriminatory basis. Assistance under the TIM is provided in support of an appropriate macroeconomic and structural policy framework designed to address the identified balance of payments problems. Financing under the TIM is made available in the context of an upper credit *tranche* stand-by arrangement, an extended arrangement, or an arrangement under

the PRGF, either at the time of approval of the underlying arrangement or on completion of a program review under an existing arrangement.

To address the difficulties involved in projecting the balance of payments consequences of a particular trade event, financial assistance in accordance with the TIM is structured into a “baseline feature” and a “deviation feature”. The baseline feature is established as part of the regular program design, either at the beginning of the underlying arrangement or at the time of a scheduled program review. The deviation feature is designed to assure a member from the outset of IMF’s readiness to consider a future augmentation in access should the balance of payments effect of the trade event turn out to be even larger than anticipated under the established baseline feature. Augmentation under the deviation feature is limited to 10 per cent of quota, and this additional financing may be granted upon a determination made by IMF in the context of a special review that: (i) the member’s adjustment program is broadly on track; and (ii) the additional financing is justified by unanticipated balance of payments difficulties of the type covered under the TIM. However, nothing prevents members from requesting IMF financial assistance outside the context of the TIM to address balance of payments problems of the type covered by this mechanism. In July 2004, Bangladesh became the first country to benefit from assistance under the TIM through augmentation of access under the existing PRGF arrangement for Bangladesh.

#### **(d) Enhanced surveillance to prevent financial crisis**

In March 2004, in view of the success of the pilot program and the importance attached to anti-money laundering and combating the financing of terrorism (AML/CFT) work, the Executive Board of the IMF agreed that AML/CFT should be a regular part of IMF’s work, and that AML/CFT assessments, whether prepared by the IMF/World Bank or the Financial Action Task Force on Money Laundering (FATF) and FATF-style regional bodies, should continue to be included in all Financial Sector Assessment Program and Offshore Financial Centers assessments. The Executive Board also endorsed the revised FATF Recommendations as the relevant standard for the preparation of AML/CFT Reports on Standards and Codes and the revised assessment methodology.

IMF and the World Bank started conducting assessments under the new methodology during the second half of 2004. In doing so, they also provided the assessed countries with guidance on how best to address shortcomings in their AML/CFT frameworks. In parallel with the assessment program, both institutions delivered increased technical assistance to their member countries in order to help them develop and strengthen their AML/CFT regimes. Finally, IMF and the World Bank have continued to play an active role in the development of AML/CFT policy in close collaboration with FATF and other international bodies.

#### **(e) Enhanced transparency – modifications to publication policy**

In February 2004, the Executive Board of the IMF decided on a set of measures to enhance transparency. The Executive Board established a policy of voluntary but presumed publication for all staff reports on the use of IMF financial resources extended in support of members’ economic adjustment programs, on post-program monitoring, and

on *ex post* program assessments. The Board further decided that, in cases where a member requests “exceptional access” to the use of IMF financial resources, the IMF Managing Director would generally not recommend Executive Board approval of such a request or the completion of an Executive Board review of the member’s program unless the member consented to the publication of the associated staff report. With regard to IMF’s surveillance function, the Executive Board also decided to move to voluntary but presumed publication of all article IV consultation country reports, related background papers, and public information notices.

Under the transparency decision, a presumption of publication means that IMF publication of an applicable document would be expected to occur within 30 calendar days of the Executive Board meeting at which that document was considered. The member is expected to indicate its intentions on publication prior to the expiration of the 30 days.

The Executive Board also decided that, prior to the publication of certain defined country-specific documents, the concerned member may request deletions to a document. The Executive Board’s decision provided that such deletions should be limited to highly market-sensitive material, mainly on exchange rates and interest rates, in banking and fiscal areas, and in vulnerability assessments. Deletions, however, do not apply to information that is already in the public domain or to politically sensitive information that is not highly market sensitive. A document may also be modified prior to publication to correct factual errors, including errors in characterizing the authorities’ views.

## 4. International Civil Aviation Organization

### (a) Membership

No new members joined the International Civil Aviation Organization (ICAO) in 2004.

### (b) Conventions and agreements

The Protocol relating to an amendment to the Convention on International Civil Aviation [article 56], signed at Montreal on 6 October 1989 (increase of the Air Navigation Commission from 15 to 19 members)<sup>356</sup> was ratified by 7 new States, bringing the total number of ratifications to 106 by the end of 2004.

### (c) Major legal developments

#### (i) *Work programme of the Legal Committee and legal meetings*

The 35th session of the ICAO Assembly established the General Work Programme of the Legal Committee as follows.

(a) Consideration of the establishment of a legal framework with regard to navigation and surveillance/air traffic management (CNS/ATM) systems, including global navigation satellite systems (GNSS). The secretariat Study Group on Legal Aspects of CNS/ATM Systems submitted its final report to the ICAO Council, which covered considerations of a

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<sup>356</sup> ICAO Document 9544.

contractual framework and of an international convention relating to CNS/ATM systems. The Council submitted its report to the 35th session of the Assembly, and, on that basis, the Assembly adopted resolution A35-3 entitled “A Practical Way Forward on Legal and Institutional Aspects of Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) Systems”.

(b) Consideration of the modernization of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952.<sup>357</sup> The Legal Committee, during its 32nd session, considered the text of a draft Convention on Damage Caused by Foreign Aircraft to Third Parties. The Council considered the Legal Committee report on this subject, which included the text of the draft convention resulting from the deliberations of the Committee. The Council agreed that the text of the draft convention was not yet mature enough for submission to a diplomatic conference and required additional study. A Special Group on the Modernization of the Rome Convention of 1952 was established to advance the work.

(c) Acts or offences of concern to the international aviation community and not covered by existing air law instruments. The Council reported to the 35th session of the Assembly on the status of the implementation of Assembly resolution A33-4 entitled “Adoption of national legislation on certain offences committed on board civil aircraft (unruly/disruptive passengers)”.

(d) International interests in mobile equipment (aircraft equipment). The Secretary General received the necessary start-up funding for the work of the Preparatory Commission for the International Registry provided on a voluntary basis by Contracting States and interested private parties. An international tendering process began and from among four candidates, the Preparatory Commission, at its second meeting held in Montreal from 27 to 28 May, selected Aviareto from Ireland as the entity which will establish the International Registry and act as the Registrar, in accordance with the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment, adopted in Cape Town in November 2001.<sup>358</sup>

The Working Group set up by the Preparatory Commission agreed on a set of draft regulations for the International Registry, which will be tabled before the Preparatory Commission at its third meeting scheduled to be held in Montreal from 17 to 18 January 2005.

(e) Review of the question of the ratification of international air law instruments. The secretariat continued to take administrative action necessary to encourage ratification of international air law instruments, such as the development and dissemination of ratification packages, promotion of ratification at various fora, and continued emphasis on ratification matters by the President of the Council and the Secretary General during their visits to States.

(f) United Nations Convention on the Law of the Sea, 1982 – Implications, if any, for the application of the Convention on International Civil Aviation (Chicago Convention),

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<sup>357</sup> ICAO Document 7364. United Nations, *Treaty Series*, vol. 310, p. 181.

<sup>358</sup> ICAO documents 9793 and 9794.

1944,<sup>359</sup> its annexes and other international air law instruments. The secretariat pursued its monitoring activities in this area.

The Legal Committee also expressed its views on a draft amendment to the Technical annex to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991,<sup>360</sup> and recommended that certain provisions of the Convention be applied, *mutatis mutandis*, without amending either the Convention or its Technical annex. Based on this recommendation, as endorsed by the Council on 31 May, the 35th session of the Assembly adopted resolution A35-2 entitled “Application of article IV of the Convention on the Marking of Plastic Explosives for the Purpose of Detection”.

### (ii) *Assistance in the field of aviation war risk insurance*

Globaltime, an ICAO proposal for a global scheme intended to provide non-cancelable, third-party aviation war risk coverage through a non-profit insurance entity with multilateral backing of Governments for the initial years, is a short- and medium-term contingency scheme.<sup>361</sup> By the end of the year, Contracting States representing 46.36 per cent of annual contribution rates indicated their intention to participate in Globaltime, among which 34.93 per cent under certain conditions.<sup>362</sup> Therefore, the 51 per cent threshold of intentions to participate has so far not been reached and the ICAO global scheme is held in contingency mode.<sup>363</sup> The secretariat continued monitoring market developments and, in this respect, participated in the High-Level Conference on Catastrophic Risks and Insurance organized on the occasion of the 74th session of the Insurance Committee of the Organization for Economic Cooperation and Development.

## 5. United Nations Educational, Scientific and Cultural Organization

### (a) International regulations

#### (i) *Entry into force of instruments previously adopted*

Within the period covered by this review, the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict adopted at the Hague on 26 March 1999 entered into force on 9 March 2004.<sup>364</sup>

<sup>359</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the text of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213; vol. 2122, p. 337; vol. 2133, p. 43; and vol. 2216, p. 483.

<sup>360</sup> ICAO document 9571. United Nations, *Treaty Series*, vol. 2122, p. 359.

<sup>361</sup> Resolution A33-20.

<sup>362</sup> Resolution A33-26.

<sup>363</sup> State Letter LE 4/64-03/65 of 30 June 2003.

<sup>364</sup> United Nations, *Treaty Series*, vol. 2253, p. 172. For more information on legal instruments, see [www.unesco.org/legal\\_instruments](http://www.unesco.org/legal_instruments). This site lists each instrument by type and by UNESCO sector of activity. Inside each instrument, html versions of the texts in English and French are available as well as links to PDF files from official documents in all six official languages of UNESCO. This site also contains the list of State parties to each convention.



(ii) *Proposals concerning the preparation of new instruments*

During 2004, preparatory work was undertaken on a preliminary draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, on a draft International Convention against Doping in Sport, and on a draft Declaration on Universal Norms on Bioethics. Proposals for the adoption of these three new instruments are included on the provisional agenda of the 33rd session of the General Conference (3–21 October 2005).

**(b) Human rights**

*Examination of cases and questions concerning the exercise of human rights coming within the United Nations Educational, Scientific and Cultural Organization's (UNESCO) fields of competence*

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 15 to 16 April 2004 and from 29 to 30 September 2004 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3<sup>365</sup> of the Executive Board.

At its April 2004 session, the Committee examined 28 communications of which 2 were examined with a view to determining their admissibility or otherwise, 19 as to their substance, and 7 were examined for the first time. Four communications were struck from the list because they were considered as having been settled. The examination of the 24 was deferred. The Committee presented its report to the Executive Board at its 169th session.

At its September 2004 session, the Committee examined 30 communications of which 4 were examined with a view to determining their admissibility, 20 as to their substance and 6 new communications were submitted to the Committee. Eight communications were struck from the list because they were considered as having been settled. The examination of the 22 was deferred. The Committee presented its report to the Executive Board at its 170th session.

**(c) Copyright activities<sup>366</sup>**

In 2004, UNESCO's activities in the field of copyright and related rights focused mainly on the following.

(i) *Information and public awareness activities*

(a) E-Copyright bulletin. Online publication of *UNESCO Copyright Bulletin* in the six official languages as a free-of-charge electronic legal journal. The Arabic version was

<sup>365</sup> Decision 104 EX/3.3 relates to the study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective. For the text of decision 104 EX/3.3, see, 104/EX/Decisions.

<sup>366</sup> For more information on copyright activities, see [www.unesco.org/culture/copyright](http://www.unesco.org/culture/copyright).

published for the first time in 2004. The *Copyright Bulletin* contains doctrine and information on national laws, on UNESCO's activities in the field, on participation of States in various conventions, and on specialised books recently published.

(b) Publication of *New topics in the field of copyright and neighbouring rights* by Professor Delya Lypzig. The book is a supplement of the *UNESCO Manual on Copyright and neighbouring rights* and covers the challenges of digital technology that copyright has faced over the last ten years and the legal and jurisprudential response to these challenges at international, regional and national levels.

(c) Collection of national copyright laws. The new version of the collection of *National Copyrights Laws in the World*, comprising about 100 national copyright and related rights legislations of UNESCO member States, has been published online. This unique tool endeavours to provide access to legal texts and is constantly being updated and completed.

#### (ii) *Training and teaching activities*

The teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs. UNESCO contributed to the reinforcement of some Chairs, and to the development of national expertise in the field of copyright by supplying the Chairs with pedagogical material in this area or supporting them in publishing their own publications. UNESCO further prepared for the establishment of new UNESCO Copyright Chairs in Cameroon and Moldova.

In addition, copyright training seminars were organised in different parts of the world.

#### (iii) *Administration of the Universal Copyright Convention<sup>367</sup> and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention)<sup>368</sup>*

In 2004, in view of the preparation of the 13th session of the Intergovernmental Copyright Committee, established under the Universal Copyright Convention, 1952, and the 19th session of the Intergovernmental Committee of the Rome Convention,<sup>369</sup> the following studies were commissioned: "Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks"; "Applicable law in cross-border cases of copyright infringement in the digital environment"; and "Report on piracy: current trends and rates and consequences for creativity and sustainable development".

<sup>367</sup> United Nations, *Treaty Series*, vol. 216, p. 132.

<sup>368</sup> United Nations, *Treaty Series*, vol. 496, p. 43.

<sup>369</sup> The two sessions will take place in June 2005 at UNESCO Headquarters.

(iv) *Enforcement and management of rights*

a. **Prevention of piracy through training**

During the period under review, UNESCO developed and launched the Anti-Piracy Training for Trainers project, consisting of a series of regional and/or subregional courses for copyright law enforcement officials, with an objective to provide knowledge and expertise in the field of copyright law and intellectual piracy, at a first stage to the participants in the course, and, at a second stage, to a larger circle of national enforcement agencies involved in anti-piracy activities, such as law-makers, government, police, customs, magistrates etc.

The first advanced course for copyright enforcement officials was organised by UNESCO in the subregion of South-East Europe in May 2004 and was followed by national anti-piracy seminars in the beneficiary countries.

b. **Prevention of piracy through public awareness-raising and information**

In 2004, UNESCO published jointly with the *Centro Regional para el Formento del Libro en América Latina y el Caribe* (CERLALC) and the Copyright Directorate of Colombia *Los oficios de la imaginación – The skills of imagination*, a copyright handbook which aims to promote a culture of respect for copyright among children in early school.

## 6. **World Meteorological Organization**

### **Cooperation with the United Nations and other organizations**

#### **Agreements and working arrangements – 2004**

- (a) Memorandum of Understanding for cooperation with the Netherlands Organization for applied Scientific Research.
- (b) Memorandum of Understanding with the International Research Institute.
- (c) Memorandum of Understanding with the Economic Cooperation Organization.

## 7. **International Maritime Organization**

### **(a) Membership of the International Maritime Organization (IMO)**

Tuvalu became a member of IMO in 2004. As at 31 December 2004, the membership of the Organization was at 164.

### **(b) Review of legal activities of IMO**

The Legal Committee held its eighty-eighth session from 19 to 23 April 2004 and its eighty-ninth session from 25 to 29 October 2004.

(i) *Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,<sup>370</sup> and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988<sup>371</sup> (SUA Convention and Protocol)*

At its eighty-eighth session, the Committee considered the need to ensure that the prospective SUA Protocols do not jeopardize the principle of freedom of navigation and the right of innocent passage which are guaranteed by the United Nations Convention on the Law of the Sea (UNCLOS), 1982, as well as by basic principles of international law. It also noted the need to consider carefully the linkage between the proposed new offences and the boarding provisions as not all offences should necessarily trigger the right to board. Concern was expressed about the inclusion in the draft of provisions criminalizing the transportation of weapons of mass destruction (WMD), as well as the criminalization of activities which were the subject of other treaties, such as the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992, and the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968. In this connection, the Committee addressed the issue of the extent of its mandate to elaborate the two draft protocols.

The Committee gave extensive consideration to the new offences contained in draft article 3 *bis* including a provision aimed at suppressing ecological terrorism by criminalizing discharges of substances in such quantities or concentration that cause serious damage to the environment and the inclusion of offences intended to criminalize the sea transport of different substances or materials.

The Committee recognized that the inclusion of boarding provisions constituted a significant departure from the fundamental principles of freedom of navigation on the high seas and exclusive jurisdiction of flag States over their vessels. In this regard, it was accepted that the principle of flag State jurisdiction must be respected and that a boarding by another State on the high seas could only take place in exceptional circumstances. The Committee also recognized that the provisions on compensation for an unjustified boarding needed to be strengthened.

At its eighty-ninth session, the Committee continued its deliberations, taking into account the work done by the *ad hoc* intersessional Working Group, which had met at IMO Headquarters from 12 to 16 July 2004. The Committee extensively discussed the dangers and difficulties of boarding at sea and whether appropriate measures could be more safely taken in port.

The Committee adopted a provision establishing that any use of force during boarding shall not exceed the minimum degree of force necessary and reasonable in the circumstances and agreed on the need to include an explicit provision on the primary right to exercise jurisdiction and the circumstances when it might be waived where States have concurrent jurisdiction over offences.

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<sup>370</sup> United Nations, *Treaty Series*, vol. 1678, p. 201.

<sup>371</sup> *Ibid.*

It also agreed on the need for the inclusion of compensation for unjustified boarding and considered several proposals in this regard. There was insufficient support for a proposal to include provisions on joint and several liability, arbitration and the right of direct action against flag and boarding States on the grounds that it was too detailed and would be difficult to implement.

The Committee extensively discussed the incorporation of transport offences and noted that a clarification of the meaning of “transporters” was required to provide legal certainty and avoid situations in which innocent passengers and crew might be accused of offences under the Convention.

The Committee agreed to include the offence of transporting a fugitive and supported, in principle, the inclusion of an offence for the transport of dual use materials and related technology. It also agreed to include in the definition of “death or serious injury or damage” resulting from unlawful acts a reference to substantial damage to the environment, including air, soil, water, fauna or flora.

The Committee agreed to reconvene its *ad hoc* intersessional Working Group from 31 January to 4 February 2005 to further elaborate the draft SUA protocols.

#### (ii) *Draft wreck removal convention*

At its eighty-eighth session, the Committee considered the following four main issues: application of the draft wreck removal convention to the territorial sea; exclusion of liability for acts of terrorism; identification of the person normally in charge of the day-to-day operation of the ship, who might not necessarily be the registered owner as presently defined in the convention; and the relationship between the draft wreck removal convention and the existing liability regimes. It also examined and approved, subject to drafting improvements, the provisions concerning objectives and general principles, scope of application, reporting of wrecks and determination of the hazard.

The Committee agreed that further intersessional work was required to ensure compatibility between the draft wreck removal convention and the International Convention on Salvage, 1989,<sup>372</sup> and requested the assistance of the *Comité Maritime International* (CMI) in this regard. The results of the CMI study were considered at the eighty-ninth session.

At that session, the Committee approved the text of an article on financial liability for locating, marking and removing wrecks and considered the implications of including terrorism within the concept of “acts of war”. It also approved an article on relationship with other liability conventions, subject to drafting improvements, to avoid the possibility of double compensation.

The Committee agreed that the draft required further consideration in the light of the comments and proposals made and recommended that work should continue intersessionally under the leadership of the delegation of the Netherlands to further refine the text.

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<sup>372</sup> United Nations, *Treaty Series*, vol. 1953, p. 165.

(iii) *Provision of financial security***Crew claims**

At its eighty-eighth session, the Committee noted the report<sup>373</sup> of the fifth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group) (12–14 January 2004).

The Committee authorized the Joint Working Group to proceed with the development of longer-term sustainable solutions to address the problems of financial security with regard to compensation in case of death and personal injury, leaving aside, for the time being, whether they should be mandatory or not.

At its eighty-ninth session, the Committee noted progress made by the Joint Working Group. It also noted that the International Labour Organization (ILO) was developing a database on cases of abandonment, which was expected to be ready and fully operational in the course of the first quarter of 2005.

The Committee renewed its call for member States and international organizations to respond to Circular letters No. 2531 on Monitoring the Implementation of the Guidelines on Provision of Financial Security in case of Abandonment of Seafarers (resolution A.930(22)) and No. 2532 on Reporting on Cases of Abandonment.

(iv) *Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974***a. Bareboat chartered vessels**

At its eighty-eighth session, the Committee noted information regarding an ongoing study of the CMI concerning the current practice of registration of bareboat chartered vessels and the implications for insurance certificate-issuing obligations under IMO liability conventions.

At its eighty-ninth session, the Committee considered a follow-up report of the CMI on this issue as well as a submission identifying two key issues relating to the compulsory insurance provisions of the Athens Protocol, 2002,<sup>374</sup> which would need to be addressed. The Committee briefly discussed the various options for resolving these issues but reached no firm conclusions except that revision of the Athens Convention<sup>375</sup> was not one of the options. It encouraged informal consultations to continue.

**b. Liability coverage under the Protocol of 2002 to the Athens Convention, 1974**

At its eighty-eighth session, the Committee noted concerns expressed by the International Group of P&I Associations (International Group) that sufficient liability coverage

<sup>373</sup> IMO/ILO/WGLCCS 5/3.

<sup>374</sup> The Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, adopted on 1 November 2002. LEG/CONF 13/20 of 19 November 2002.

<sup>375</sup> United Nations, *Treaty Series*, vol. 1463, p. 19.

may not be available to permit certification of the liability exposure under the Athens Protocol, 2002. Liability cover for acts of terrorism was a particular problem. In this connection, it noted that the delegation of Norway had undertaken to explore the insurance issue through informal exchanges of views with other delegations and would report back to it.

(v) *Fair treatment of seafarers*

At its eighty-eighth session, the Committee considered a submission expressing concern about the treatment of seafarers following maritime accidents and proposing that IMO, perhaps in cooperation with ILO, consider the development of appropriate guidelines or other measures on the fair treatment of seafarers caught up in such situations based not only on the principles of UNCLOS but also on the fact that unwarranted detention was a violation of basic human rights.

The Committee noted the information given by the representative of ILO on action taken within that Organization and suggested the formation of a Joint IMO/ILO Working Group to develop guidelines on the subject. The Committee further noted the Secretary-General's concerns regarding the detention of seafarers serving on ships involved in accidents, which have resulted in serious pollution of the marine environment.

The Committee agreed to include as a new, independent item on its work programme the development of guidelines on the fair treatment of seafarers and endorsed the proposal to establish a Joint IMO/ILO Working Group.

At its eighty-ninth session, the Committee agreed on terms of reference for the Working Group and noted that these did not extend to the treatment of seafarers following incidents committed with criminal intent.

(vi) *Places of refuge*

At its eighty-eighth session, the Committee noted that resolution A.949(23) on Guidelines on Places of Refuge for Ships in Need of Assistance requested it to consider, as a matter of priority, the said Guidelines from a legal perspective, including the provision of financial security to cover coastal State expenses and compensation issues.

The Committee noted that the CMI would be considering liability and compensation issues at its Vancouver Conference in June 2004 and that the International Group intended to formulate a standard form letter of undertaking to facilitate access to places of refuge in appropriate cases, which would respond to liabilities that were already covered, such as pollution and wreck removal.

At its eighty-ninth session, the Committee noted a proposal from the CMI Vancouver Conference for a new convention on places of refuge as well as the views of the International Group that it would be premature for IMO to decide on the need for such a convention, prior to the entry into force of all the IMO conventions on liability and compensation and an assessment of their effect in relation to places of refuge. The Committee agreed that this matter required further study.

(vii) *Monitoring the implementation of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by Sea, 1996 (HNS Convention)*<sup>376</sup>

At its eighty-eighth session, the Committee noted the work in progress in several countries towards ratification of the HNS Convention and that the International Oil Pollution Compensation (IOPC) Funds were near to completing the development of an HNS Data Base, which would include a “cargo calculator” to facilitate reporting of contributing HNS Cargo. It also noted a report of the delegation of the United Kingdom, as leader of the HNS Correspondence Group, on the work undertaken by the Group since the Legal Committee’s eighty-sixth session.

At its eighty-ninth session, the Committee noted a further report by the HNS Correspondence Group, in particular, that the ratification process had been held back to ensure that as many States as possible ratify at or about the same time, thereby triggering the entry into force of the treaty.

The Committee also noted that article 43 of the HNS Convention imposed a requirement on States parties to report information on contributing cargo at the time of ratification and on an annual basis, including nil reports. In this connection, it noted that the IOPC Funds had completed the development of a database for identifying and recording contributing cargo.

(viii) *Access of news media to the proceedings of institutionalized committees*

At its eighty-eighth session, the Committee considered a submission containing draft guidelines on the access of news media to the proceedings of various committees of the Organization and agreed, in principle, to the establishment of such guidelines.

In so doing, it endorsed the views of the Secretary-General on trust and co-operation with the press and also agreed on the need for IMO meetings to be transparent, noting, however, that the press should be accurate in their reporting and that the guidelines should maintain the right balance between publicity for the work of the Organization whilst, at the same time, maintaining the efficient and effective conduct of IMO meetings. Since the aim was to apply the guidelines to all committees and their subsidiary bodies, the rules of procedure of each committee might need to be changed to permit access by the media to the proceedings of the various IMO organs.

At its eighty-ninth session, the Committee adopted an amendment to rule 9 of its Rules of Procedure to explicitly allow access to its meetings by news media, without, at the same time, opening them to the general public. It also noted that a system of accreditation of representatives from the maritime news media had been established to facilitate their attendance at IMO meetings.

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<sup>376</sup> LEG/CONF.10/8/2 of 9 May 1996.



(ix) *Technical cooperation – subprogramme for maritime legislation*

At its eighty-eighth session, the Committee noted the progress report provided in document LEG 88/11 and its annex on technical cooperation activities in the field of maritime legislation which had taken place from July to December 2003.

It further noted the information provided by the Technical Cooperation Division, regarding the increasing number of requests from developing countries for assistance in updating their maritime legislation, the special global programme to address new and urgent requests in this regard, as well as the recently-completed impact assessment exercise on maritime legislation.

At its eighty-ninth session, the Committee noted a progress report on technical co-operation activities in the field of maritime legislation which had taken place from January to June 2004 and, in particular, the development of some 18 models of primary or secondary legislation.

(x) *Torres Strait Particularly Sensitive Sea Area  
associated protective measure – compulsory pilotage*

At its eighty-ninth session, the Committee considered the legal aspects of compulsory pilotage in straits used for international navigation, in the light of a proposal by Australia and Papua New Guinea to extend the existing Great Barrier Reef Particularly Sensitive Sea Area to cover the Torres Strait and to adopt, as one associated protective measure, a compulsory pilotage scheme in the Torres Strait.

There was general recognition of the importance of protecting the marine environment of the Torres Strait, as well as of upholding fundamental principles of international law, including those codified in UNCLOS, in particular the right of transit passage through a strait used for international navigation. There was also agreement that IMO was the competent international organization to address such measures. However, the Committee remained divided on the legality of compulsory pilotage in a strait used for international navigation.

(xi) *Measures to protect crews and passengers against crimes on vessels*

At its eighty-eighth session, the Committee noted an interim analysis by the CMI on its ongoing work to examine State practice on how crimes committed on vessels on the high seas were handled in different jurisdictions as well as suggestions by one delegation on possible measures to prevent such crimes.

At its eighty-ninth session, the Committee noted the adoption of a resolution by the CMI Assembly on the ability of coastal States to take custody of a foreign citizen accused of a criminal offence on a foreign flag ship on the high seas and the recommendation therein that the CMI establish a Joint International Working Group to draft a model national law concerning such offences. However, it was decided that no further action was required of the Committee at this time, leaving open the possibility that the matter could be reactivated at some future meeting by interested delegations.

(xii) *Severe Marine Pollutants and the 1973 Intervention Protocol*<sup>377</sup>

At its eighty-eighth session, the Committee noted the information concerning developments taking place in the Sub-Committee on Dangerous Goods, Solid Cargoes and Containers affecting the list of substances to which the 1973 Intervention Protocol applies and the potential implications of this information for the HNS Convention.

(xiii) *Work programme and long-term work plan*

At its eighty-ninth session, the Committee considered that, notwithstanding the good progress made by the Working Group on the revision of the SUA treaties at that session, the draft instruments would still require another week of the Committee's time. It accordingly decided to hold a second session of its *ad hoc* intersessional Working Group from 31 January to 4 February 2005 and to have a two-week Legal Committee meeting from 18 to 29 April 2005, on the understanding that the first week would be completely devoted to the finalization of the revision of the SUA treaties and the second week would then be devoted to the draft wreck removal convention and the remaining items on the Committee's agenda.

The Committee decided to recommend the convening of a Diplomatic Conference on the revision of the SUA treaties from 10 to 14 October 2005.

## 8. World Health Organization

### (a) Constitutional developments

In 2004, no new member State joined the World Health Organization (WHO). Thus at the end of 2004, there were 192 member States and two Associate members of WHO.

As at 31 December 2004, the amendments to articles 24 and 25 of the WHO Constitution, adopted in 1998 by the fifty-first World Health Assembly to increase the membership of the Executive Board from thirty-two to thirty-four, had been accepted by 116 member States; the amendment to article 7 of the Constitution, adopted in 1965 by the eighteenth World Health Assembly to suspend certain rights of members practising racial discrimination, had been accepted by 90 member States; and the amendment to article 74 of the Constitution, adopted in 1978 by the thirty-first World Health Assembly to establish Arabic as one of the authentic languages of the Constitution, had been accepted by 91 member States. Acceptance by two-thirds of the member States, i.e., by 128 members, is required for the amendments to enter into force.

### (b) Other normative developments and activities

#### (i) *WHO Framework Convention on Tobacco Control*

On 21 May 2003, the fifty-sixth World Health Assembly adopted by resolution WHA56.1 the WHO Framework Convention on Tobacco Control (FCTC) and established

<sup>377</sup> Protocol relating to intervention on the high seas in cases of pollution by substances other than oil, 1973. United Nations, *Treaty Series*, vol. 1313, p. 3.

an Open-ended Intergovernmental Working Group (IGWG) to consider and prepare proposals on a number of issues identified in the Convention. In preparation for the convening of the Conference of the Parties and the implementation of the treaty, the IGWG held its first session from 21 to 25 June 2004. The issues considered included: Rules of Procedure for the Conference of the Parties; options for the designation of the permanent secretariat; Financial Rules for the Conference of the Parties; a draft budget for the first financial period; and a review of existing sources and mechanisms of funding for the treaty. There was general agreement on the establishment of the permanent secretariat at WHO and the need for WHO to undertake a detailed study on potential sources and mechanisms of support for the FCTC. There was also consensus on the draft Rules of Procedure for the Conference of Parties and the draft Financial Rules. The IGWG requested WHO to prepare a full report on these issues, highlighting areas of convergence and identifying those areas that required further work.

The FCTC closed for signature on 29 June 2004. It continued to be open for ratification, acceptance, approval or formal confirmation by those countries or regional economic integration organizations that had already signed it and for accession by those that had not. On 29 November 2004, the fortieth instrument of ratification, acceptance, approval, formal confirmation, or accession of the convention was deposited and, in accordance with its article 36, the treaty would enter into force ninety days after that deposit, i.e., on 27 February 2005. By the end of 2004, the Convention had attained a total of 49 Contracting Parties and 167 member States and the European Community had signed it. The adoption of the FCTC by the World Health Assembly in 2003 and its rapid acceptance have demonstrated that WHO and its member States recognize the importance of the Convention in the global effort to counteract tobacco-related illness.

WHO continued to expand its capacity to provide general and specialized legal support to member States on tobacco control. These activities were increasingly focused on supporting the drafting of tobacco control legislation and the incorporation of provisions of the FCTC in national legislation, at the request by member States. WHO convened workshops regarding enforcement of tobacco control legislation in its South-East Asia Region and on enforcement of packaging and labeling legislation in its region of the Americas. Legal support was also provided through country missions by WHO Headquarters staff. FCTC awareness-raising and capacity-building workshops were convened at subregional or national levels in all the six WHO regions to provide information on the specific obligations contained in the Convention, its opportunities and implications, and the legal and practical issues regarding its adoption.

### (ii) *Revision of the International Health Regulations*

As requested by resolution WHA56.28, adopted by the fifty-sixth World Health Assembly on 28 May 2003, the WHO secretariat prepared an initial draft of the revised International Health Regulations (IHR). The document was communicated to WHO member States on 12 January 2004 in time for regional consultations that took place between March and June of the same year. Resources were provided to all the six WHO regions to ensure the participation of the least developed countries. The results from the regional consultations together with other comments received were used by the secretariat to prepare a second draft of the revised IHR that was communicated to member States on

30 September 2004. The Intergovernmental Working Group on the Revision of the IHR, established by resolution WHA56.28 to review and recommend a draft revision of the IHR for consideration by the Health Assembly, held its first session from 1 to 12 November 2004. Although significant progress was made by the Working Group, member States agreed that a second session would be required in February 2005 to finalize the negotiations on the revised IHR and requested the Chair of the Working Group to prepare a proposal reflecting the outcome of the discussions. It was anticipated that the proposal by the Chair would form the basis for the discussions at its second session.

### (iii) *Health legislation*

In 2004, the WHO Health Law Work Programme continued to administer the *International Digest of Health Legislation* and *Recueil international de législation sanitaire*, which contains a selection of national, regional and international health legislation. The texts represent over 140 jurisdictions and cover a range of diverse subjects, such as health sector organization, the control of emerging communicable diseases (SARS and avian influenza), organ transplantation, blood transfusion, domestic violence, abortion, the employment of disabled persons, mental health, smoking control, patients' rights, pesticide residues in food, waste management, greenhouse gas emissions, radiation protection, and road safety. The collection serves as an effective means for exchange of information and technical cooperation with countries in the field of health legislation. In addition, WHO launched the Directory of Legal Instruments on HIV/AIDS.

WHO supported member States, at their request, in developing appropriate national health legislation adapted to their needs. This country specific work, often conducted in collaboration with the WHO Regional and Country Offices, was performed, for example, with Pakistan, South Africa and Viet Nam concerning the preparation of their respective organ transplantation laws in the implementation of the World Health Assembly resolutions WHA44.25 and WHA57.18; Belarus in strengthening legislation on patients' rights; Togo in reviewing and supporting the finalization of the draft Code of Health Law; Tonga and Vanuatu on seatbelt/road safety legislation; Viet Nam and the Philippines on the implementation of the International Code of Marketing of Breast milk Substitutes; Cambodia, Cook Islands and the Lao People's Democratic Republic on food safety legislation; and Japan in conducting research on leprosy legislation. In addition, WHO provided support to member States on the drafting of tobacco control legislation (see above at (i)), and in the teaching of health law in Dakar University, Senegal, and collaborated in the organization of regional and international conferences in the fields of medical and health law.

The WHO Health Law Work Programme continued to develop model health legislation as tools for technical cooperation in health law. These legislative guidelines and good practice models are intended to assist *member States when reviewing and updating their legislative and regulatory frameworks*. In 2004, the work focused on elaborating a Model Legislative Framework for National Blood Transfusion Policy and a Model Electromagnetic Fields Law and Regulations. WHO also launched a major project to develop a Model Public Health Act to advance the United Nations Millennium Development Goals and to serve as a reference tool for member States to update laws with current issues in public health.

(iv) *Other activities*

WHO actively participated in the drafting process of the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. During the fourth meeting of the Ad Hoc Committee on this topic, WHO submitted a statement including comments on the draft provisions of particular interest to the Organization, including draft article 21, entitled “Right to health and rehabilitation”.

WHO continued to provide technical support to the United Nations human rights treaty monitoring bodies, in particular to the Committee on the Rights of the Child, the Committee on the Elimination of All Forms of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights, in relation to health and human rights issues.

In General Comment number 14<sup>378</sup> on the right to the highest attainable standard of health issued by the Committee on Economic, Social and Cultural Rights in 2000, the Committee noted the need for right to health indicators designed to monitor, at the national and international levels, State parties’ obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.<sup>379</sup> In the General Comment, the Committee identified WHO as one of the relevant United Nations agencies to guide States parties in that process. In this context, WHO convened in 2004 the second consultation on the right to health indicators.

The Codex Alimentarius Committee on Food Labelling (CCFL) undertook, at the request of the Codex Alimentarius Commission, to consider developing a definition for advertising in relation to health and nutrition claims. The WHO Regional Office for the Western Pacific conducted country specific training concerning the work of the Codex Alimentarius Commission and promoted regional cooperation in the field of food safety, *inter alia*, by establishing a database on food legislation and imported food control.<sup>380</sup>

The Organization continued to monitor the implementation of the International Code of Marketing of Breast milk Substitutes, adopted by the World Health Assembly in 1981. A course on its implementation was organized, with WHO support, for the Pacific in November 2004.

## 9. International Atomic Energy Agency

### (a) Membership

In 2004, Mauritania became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 138 member States.

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<sup>378</sup> E/C.12/2000/4.

<sup>379</sup> United Nations, *Treaty Series*, vol. 993, p. 3.

<sup>380</sup> The database is available at [www.wpro.who.int/fsi/legislation/search.asp](http://www.wpro.who.int/fsi/legislation/search.asp).

### (b) Privileges and immunities

In 2004, the status of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959,<sup>381</sup> remained unchanged with 73 parties.

### (c) Legal instruments

#### (i) *Convention on the Physical Protection of Nuclear Material, 1979*<sup>382</sup>

In 2004, Azerbaijan, Burkina Faso, Cameroon, the Democratic Republic of the Congo, Djibouti, Dominica, Honduras, Kuwait, Nicaragua, Niger and Qatar adhered to the Convention. By the end of the year, there were 110 parties.

#### (ii) *Convention on Early Notification of a Nuclear Accident, 1986*<sup>383</sup>

In 2004, Algeria and Angola adhered to the Convention. By the end of the year, there were 93 parties.

#### (iii) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*<sup>384</sup>

In 2004, Algeria and Chile adhered to the Convention. By the end of the year, there were 90 parties.

#### (iv) *Vienna Convention on Civil Liability for Nuclear Damage, 1963*<sup>385</sup>

In 2004, the status of the Convention remained unchanged with 32 parties.

#### (v) *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, 1988*<sup>386</sup>

In 2004, the status of the Joint Protocol remained unchanged with 24 parties.

#### (vi) *Convention on Nuclear Safety, 1994*<sup>387</sup>

In 2004, the status of the Convention remained unchanged with 55 parties.

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<sup>381</sup> United Nations, *Treaty Series*, vol. 374, p. 147.

<sup>382</sup> United Nations, *Treaty Series*, vol. 1456, p. 101.

<sup>383</sup> United Nations, *Treaty Series*, vol. 1439, p. 275.

<sup>384</sup> United Nations, *Treaty Series*, vol. 1457, p. 133.

<sup>385</sup> United Nations, *Treaty Series*, vol. 1063, p. 265.

<sup>386</sup> United Nations, *Treaty Series*, vol. 1672, p. 293.

<sup>387</sup> United Nations, *Treaty Series*, vol. 1963, p. 293.

(vii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*<sup>388</sup>

In 2004, Lithuania adhered to the Convention. By the end of the year, there were 34 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*<sup>389</sup>

In 2004, the status of the Protocol remained unchanged with five parties.

(ix) *Convention on Supplementary Compensation for Nuclear Damage, 1997*<sup>390</sup>

In 2004, the status of the Convention remained unchanged with three parties.

(x) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*

In 2004, Tajikistan concluded the RSA Agreement. By the end of the year, there were 100 member States which concluded the RSA Agreement with the Agency.

**(d) Legislative assistance activities**

As part of its technical cooperation programme for 2004, IAEA provided legislative assistance to a number of member States from various regions through both bilateral meetings and regional workshops. Legislative assistance was given to 11 countries by means of written comments or advice on specific national legislation submitted to the Agency for review. Also, at the request of member States, trainings on issues related to nuclear legislation were provided to 13 fellows.

In addition, the IAEA's legislative assistance activities in 2004 included the following:

(a) A Regional Training Workshop for French and English African speaking countries for the Development of a Legal Framework for Preparedness and Response to Radiological Emergencies and for Civil Liability for Nuclear Damage, was held at IAEA Headquarters in Vienna, Austria, from 11 to 15 October 2004; and

(b) A Regional Workshop for countries of the Latin America region on the Effective Implementation of National Nuclear Energy Legislation, was organised with the cooperation of the National Centre for Nuclear Security (CNSN) of the Government of Cuba, and was held in Havana, Cuba, from 15 to 19 November 2004.

<sup>388</sup> United Nations, *Treaty Series*, vol. 2153, p. 303.

<sup>389</sup> INFCIRC/566.

<sup>390</sup> INFCIRC/567.

(i) *Convention on the Physical Protection of Nuclear Material, 1979 (CPPNM)*

In 2004, the formal process towards amending the CPPNM started. On 5 July 2004, at the request of the Government of Austria and 24 cosponsoring States, and in accordance with article 20, paragraph 1, of the CPPNM, the Director General circulated proposed amendments to the CPPNM to all States parties, which would extend the scope of the CPPNM to cover, *inter alia*, the physical protection of nuclear material used for peaceful purposes, in domestic use, storage and transport and the physical protection of nuclear material and the protection of peaceful nuclear facilities against sabotage.

Under the terms of the CPPNM, the Director General shall convene a conference to consider the proposed amendments when requested to do so by the majority of the States parties to the CPPNM.

(ii) *Convention on Nuclear Safety, 1994*

Pursuant to rule 11 of the Rules of Procedure and Financial Rules of the Convention on Nuclear Safety, 1994, the Organizational Meeting for the third Review Meeting of Contracting Parties to the Convention was held at IAEA Headquarters, Vienna, Austria, from 28 to 30 September 2004. Out of 55 Contracting Parties 44 participated in the meeting.

(iii) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997*

It was agreed at the first Review Meeting of Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (held from 3 to 14 November 2003), that the General Committee of the first Review Meeting could function during the period between the first Review Meeting and the Organizational Meeting (scheduled from 7 to 9 November 2005) for the second Review Meeting (scheduled to take place from 15 to 26 May 2006). The purpose would be for the General Committee to review draft documents, prepared by the IAEA secretariat, “to clarify the guidelines to better reflect the duties of officers, prior to and during a Review Meeting and their necessary qualifications”. The membership of the General Committee consists of the President and Vice President of the first Review Meeting and the Chairs of the Country Groups. The General Committee met at IAEA Headquarters, Vienna, Austria, from 9 to 11 June 2004.

The first two issues of the newsletter *Joint Convention News* were published in April and September 2004, respectively. This was a new initiative under the Joint Convention created as a means of providing to Contracting Parties information on developments, as well as enabling work and discussions, between meetings.



(iv) *Code of Conduct on the Safety and Security of Radioactive Sources and Guidance on the Import and Export of Radioactive Sources*<sup>391</sup>

In January 2004, the revised Code of Conduct on the Safety and Security of Radioactive Sources was published by the IAEA. The revised Code of Conduct had been approved by the IAEA Board of Governors<sup>392</sup> and subsequently endorsed by the IAEA General Conference, in September 2003. In endorsing the objectives and principles set out in the Code of Conduct, the General Conference had recognized that the Code is not a legally binding instrument.

The general objective of the Code is to achieve a high level of safety and security of radioactive sources that may pose a significant risk, which are referred to in annex I to the Code. The Code includes guidance on general basic principles, legislation and the regulatory body, with paragraphs 23 to 29 containing specific guidance on the import and export of radioactive sources.

By late 2004, over 60 countries had informed, pursuant to IAEA General Conference resolution GC(47)/RES/7.B, that they are respectively working towards following the guidance contained in the Code.

In 2004, the IAEA secretariat convened an open-ended group of technical and legal experts to develop guidance on the import and export of radioactive sources in order to facilitate the implementation of the Code of Conduct. In September 2004, the Board approved the Guidance on the Import and Export of Radioactive Sources,<sup>393</sup> and, during the same month, the General Conference welcomed the Board's approval and endorsed the Guidance while recognizing that it is not legally binding. The Guidance is supplementary to the Code and it is intended to assist States in working towards following the Code of Conduct.

(v) *Code of Conduct on the Safety of Research Reactors*

In March 2004, the IAEA Board of Governors approved the Code on the Safety of Research Reactors.<sup>394</sup> The Code was subsequently transmitted<sup>395</sup> to the September 2004 General Conference which, *inter alia*, endorsed the guidance for the safe management of research reactors set out in the Code and encouraged member States to apply it.

The objective of the Code is to achieve and maintain a high level of nuclear safety in research reactors worldwide through the enhancement of national measures and international cooperation, including where appropriate, safety related technical cooperation. The Code provides guidance for the State, the national regulatory body and the relevant operating organization and applies to the safety of research reactors at all stages of their lives from sitting to decommissioning.

<sup>391</sup> IAEA/CODEOC/2004 (2004).

<sup>392</sup> GOV/2003/49-GC(47)/9.

<sup>393</sup> GOV/2004/62-GC(48)/13.

<sup>394</sup> GOV/2004/4/Corr.1.

<sup>395</sup> Document GC(48)/7.

(vi) *Safeguards Agreements*

During 2004, Safeguards Agreements pursuant to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), 1968,<sup>396</sup> with Cameroon,<sup>397</sup> Kyrgyzstan,<sup>398</sup> Seychelles,<sup>399</sup> and Tajikistan<sup>400</sup> entered into force. A Safeguards Agreement concluded with Cuba<sup>401</sup> pursuant to the NPT and the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean<sup>402</sup> entered into force. In addition, a Safeguards Agreement with Uganda pursuant to the NPT was approved by the Board of Governors, but has not yet entered into force.

Also in 2004, Protocols Additional to the Safeguards Agreements between IAEA and Armenia,<sup>403</sup> Cuba,<sup>404</sup> El Salvador,<sup>405</sup> Ghana,<sup>406</sup> the Republic of Korea,<sup>407</sup> Paraguay,<sup>408</sup> Seychelles,<sup>409</sup> Tajikistan,<sup>410</sup> and Uruguay<sup>411</sup> entered into force. Additional Protocols between IAEA, EURATOM and France;<sup>412</sup> between IAEA, EURATOM and the United Kingdom;<sup>413</sup> and between IAEA, EURATOM and Austria, Belgium, Denmark, Germany, Finland, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden<sup>414</sup> entered into force. Additional Protocols were signed by Albania, Cameroon, Kazakhstan, Kiribati, the Libyan Arab Jamahiriya, Mauritius, Mexico, Morocco, Niger and Tanzania but have not yet entered into force. Five other Additional Protocols, with Algeria, Benin, Colombia, Serbia and Montenegro, and Uganda, were approved by the Board of Governors in 2004.

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<sup>396</sup> United Nations, *Treaty Series*, vol. 729, p. 161.

<sup>397</sup> Reproduced in IAEA Document INFCIRC/641.

<sup>398</sup> Reproduced in IAEA Document INFCIRC/629.

<sup>399</sup> Reproduced in IAEA Document INFCIRC/635.

<sup>400</sup> Reproduced in IAEA Document INFCIRC/639.

<sup>401</sup> Reproduced in IAEA Document INFCIRC/633.

<sup>402</sup> United Nations. *Treaty Series*, vol. 634, p. 281.

<sup>403</sup> Reproduced in IAEA Document INFCIRC/455/Add.2.

<sup>404</sup> Reproduced in IAEA Document INFCIRC/633/Add.1.

<sup>405</sup> Reproduced in IAEA Document INFCIRC/232/Add.1.

<sup>406</sup> Reproduced in IAEA Document INFCIRC/226/Add.2.

<sup>407</sup> Reproduced in IAEA Document INFCIRC/236/Add.1.

<sup>408</sup> Reproduced in IAEA Document INFCIRC/279/Add.1.

<sup>409</sup> Reproduced in IAEA Document INFCIRC/635/Add.1.

<sup>410</sup> Reproduced in IAEA Document INFCIRC/639/Add.1.

<sup>411</sup> Reproduced in IAEA Document INFCIRC/157/Add.2.

<sup>412</sup> Reproduced in IAEA Document INFCIRC/290/Add.1.

<sup>413</sup> Reproduced in IAEA Document INFCIRC/263/Add.1.

<sup>414</sup> Reproduced in IAEA Document INFCIRC/193/Add.8.

## 10. World Intellectual Property Organization

### (a) Introduction

During the period under review, the World Intellectual Property Organization (WIPO) concentrated on the implementation of substantive work programs through three sectors: cooperation with member States; international registration of intellectual property rights; and intellectual property treaty formulation and normative development, all of which are summarized below.

### (b) Cooperation for development activities

In 2004, WIPO's cooperation for development activities supported developing countries in optimizing their intellectual property systems for economic, social and cultural benefits. The main forms in which WIPO provided assistance to developing countries continued to be the development of human resources, the provision of legal advice and technical assistance for the automation of administrative procedures. In particular, legal assistance on the compatibility of national legislation with WIPO-administered treaties and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), 1994,<sup>415</sup> aimed, *inter alia*, to enable policy-makers and legal officials to make informed decisions (i) on the use of flexibilities available in the international legal framework; (ii) in their national laws; and (iii) regarding accession to those international treaties to facilitate their use of intellectual property in business development and trade. In this respect, WIPO provided legal and technical assistance to 44 developing countries in the form of 45 draft laws, 33 comments on draft legislation, and 8 consultations.

As the mid-term Review of the Implementation of the Program of Action for the Least Developed Countries (LDCs) approached, coordination and monitoring of the implementation of WIPO deliverables for LDCs continued to be an important component of work undertaken. In this regard, substantive legislative and technical assistance was provided in five important areas, namely: human resources development; information technology; genetic resources; traditional knowledge and folklore; small and medium-sized enterprises; and the establishment of collective management societies.

In October 2004, the Ministerial Conference on Intellectual Property for Least Developing Countries was organized by WIPO in cooperation with the Government of the Republic of Korea to discuss the integration of intellectual property into LDCs national development policies.

The development of human resources in developing countries and countries in transition continued to be a crucial strategic component in the efforts to modernize the intellectual property system as well as for its effective implementation and use. The WIPO Worldwide Academy contributed to this goal through significant activities towards policy development, professional training and distance learning programs. In particular, four new advanced online distance learning courses were initiated in the areas of plant varieties protection, patents, crafts and visual arts (for small and medium-sized enterprises), and intellectual property dispute resolution (the WIPO Arbitration and Mediation Center).

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<sup>415</sup> United Nations, *Treaty Series*, vol. 1869, p. 299 (annex I C).

### (c) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States through the progressive development of international approaches in the protection, administration and enforcement of intellectual property rights. The establishment of common principles and rules governing intellectual property requires extensive consultations. In this respect, three WIPO Standing Committees on legal matters – one dealing with patents, one dealing with trademarks, industrial designs and geographical indications, and one dealing with copyright and related rights – help member States to centralize the discussions, coordinate efforts and establish priorities in these areas.

#### (i) *Standing Committee on the Law of Patents (SCP)*

In May 2004, at its tenth session, the SCP made substantial progress in developing the international patent system in accordance with the interests and the policies of member States and with a view to enhancing international cooperation in the area of patent law and practice. Discussions continued to be primarily devoted to the provisions of the draft Substantive Patent Law Treaty (SPLT) and related regulations and practice guidelines, and on how to proceed with the harmonization of certain concepts of substantive patent law.

In September 2004, on the request of the SCP, the secretariat submitted to the Assemblies of WIPO member States an initial draft study entitled: “Enlarged Concept of Novelty: Initial Study Concerning Novelty and the Prior Art Effect of Certain Applications under article 8(2) of the draft SPLT”. This study aims to provide broad background information and to facilitate further substantive discussion in the SCP and addresses not only national and regional laws and practices regarding the prior art effect of earlier applications, but also the policy objectives underlying these different practices.

#### (ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

Two sessions of the SCT were held in 2004 at which good progress was made in regard to the revision process of the Trademark Law Treaty (TLT), 1994.<sup>416</sup> In this respect, the Assemblies of WIPO member States approved the convening of a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty to be scheduled in March 2006, which will update the existing treaty, bringing its procedures into line with technological advances.

Work on the harmonization of rules or guiding principles on trademark law and related administrative practices focused on the evaluation of data collected from member States via a questionnaire on trademark law and practice. The information collected was summarized by the secretariat in a document, which may in due course result in recommendations or guidelines on the items covered.

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<sup>416</sup> United Nations, *Treaty Series*, vol. 2037, p. 35.

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

In response to the impact of digital and other new technologies and the growing use of the Internet, in 2004, the SCCR continued to make substantial progress towards the convening of a diplomatic conference for the possible adoption of an international instrument on the protection of broadcasting organizations. A revised consolidated treaty text was prepared for the SCCR's twelfth session held in November 2004, based on proposals submitted by WIPO member States and the European Community to further promote consensus and to facilitate the deliberations of the SCCR.

The SCCR also continued discussions on protecting the investment involved in creating and maintaining non-original databases while striving to maintain affordable access to scientific and technical journals or other sources of information in the public domain.

In September 2004, the Assemblies of WIPO member States reviewed the status of consultations on outstanding issues relating to the protection of audiovisual performances and decided on further action. In line with this, in November 2004, WIPO organized an Information Meeting on the Protection of Audiovisual Performances and on this occasion, a study was presented for the consideration of all delegations entitled: "Study on Transfer of the Rights of Performers to Producers of Audiovisual Fixations: Conclusions".

(iv) *Standing Committee on Information Technologies (SCIT)*

At its meeting held in January 2004, the Standards and Documentation Working Group (SDWG) of the SCIT adopted some revisions to WIPO Standards facilitating the access to and the use of publicly available industrial property information associated with the grant of patents, trademarks and industrial designs. Progress was also made in relation to some proposals to revise WIPO Standards relating to trademarks for the electronic management of figurative elements of trademarks. A Task Force to renew the WIPO *Handbook on Industrial Property Information and Documentation* was also established.

**(d) International registration activities**

(i) *Patents*

In September 2004, the Assembly of the Patent Cooperation Treaty (PCT), 1970,<sup>417</sup> Union adopted amendments to the PCT Regulations having effect as from April 2005. These changes concerned the simplification of the protest procedure in case of non-unity of the invention and corrigenda to consequential amendments further to the amendments already adopted by the PCT Union Assembly in 2002.

By the end of 2004, the PCT celebrated the filing of the one millionth PCT application. In 2004 alone, a record 122,898 international patent applications were filed, representing an increase of 11.5 per cent over 2003. A total of 7,268 international applications originated from the top ten developing countries compared to 5,861 in 2003. Furthermore,

<sup>417</sup> United Nations, *Treaty Series*, vol. 1160, p. 231. For the text of the treaty as amended and modified, see under "Treaties" at [www.wipo.int](http://www.wipo.int).

by the end of 2004, the total number of PCT Contracting States rose to 124, of which 69 (or 56 per cent) are developing countries.

(ii) *PCT electronic filing*

In February 2004, the electronic filing of international patent applications based on the PCT-SAFE software launched in 2003, became available to all applicants. About 14 per cent of the PCT applications filed in 2004 were filed in a full electronic form. Further, to allow the WIPO secretariat to receive, process and communicate priority documents submitted in electronic form, a new electronic priority document (E-Pdoc) application system was also launched in 2004.

(iii) *Trademarks*

In April 2004, a number of amendments to the Common Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), 1989,<sup>418</sup> entered into force. The amendments resulted in the inclusion of Spanish as an additional language of the Madrid System and enabled the accession of the European Community to the Madrid Protocol to become operational. Consequently, the use of the international trademark registration system reached a record level for 2004. In fact, the WIPO secretariat received 29,482 new international trademark applications (an increase of 5,610, or 23.5 per cent over 2003) and recorded, notified and published 23,382 international registrations (an increase of 1,532, or 7.0 per cent, over 2003). This brought to some 424,000 the total number of international registrations in force under the Madrid System belonging to over 138,280 different trademark holders.

During 2004, the International Bureau processed 7,345 renewals (an increase of 708, or 10.6 per cent over 2003), 9,759 subsequent designations (an increase of 1,016 or 11.6 per cent over 2003) and 48,150 other changes to existing registrations (6,271 or 11.7 per cent less than in 2003). Since each international registration under this system includes roughly 12 Contracting Parties in which the registration has effect, the number of international trademark registrations in force at the end of 2004 was equivalent to some five million national registrations.

The year 2004 also saw an important development of the membership of the Madrid Protocol with the adherence of Kyrgyzstan, Namibia, the Syrian Arab Republic, and one intergovernmental organization, the European Community. The European Community was the first intergovernmental organization ever to join the Protocol.

(iv) *Industrial designs*

The Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement concerning the International Deposit of Industrial Design, 1925,<sup>419</sup> came into force in April 2004.

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<sup>418</sup> WIPO Publication Number: 204.

<sup>419</sup> WIPO Publication Number: 269.

During the year, the International Bureau received a total of 1,376 international industrial design applications, 1,415 registrations and 3,591 renewals. Compared to 2003, these figures report a decrease of 37.0 per cent, 42.8 per cent and 3.7 per cent respectively, and represent a declining trend which is thought to be a consequence of the entering into operation, in April 2003, of the European Community's Registered Design System.

### (e) Intellectual property and global issues

#### (i) *Genetic resources, traditional knowledge and folklore*

At its sixth and seventh sessions, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) made solid progress towards a strong international framework through a range of practical initiatives for capacity-building, legal and policy guidance and defensive protection against illegitimate patenting of traditional knowledge. The IGC agreed to develop concrete outcomes in the form of two draft overviews of the policy objectives for the protection of traditional knowledge and traditional cultural expressions. These draft provisions have been accepted as a framework of reference for the work of the IGC.

#### (ii) *Small and medium-sized enterprises (SMEs) and intellectual property*

Activities focused on the development of an extensive international network of partners to help deliver the message of the crucial role played by the intellectual property system in enhancing the competitiveness of SMEs in all sectors of the economy. This network included SME support and finance institutions worldwide, other United Nations agencies, national SME focal points, intellectual property offices and copyright administrations in member States.

#### (iii) *Intellectual property enforcement issues*

At its second session held in June 2004, the Advisory Committee on Enforcement (ACE) examined the role of the judiciary, quasi-judicial authorities and the prosecution in the enforcement of intellectual property rights and related issues, such as litigation costs, parallels between civil and common law legal systems, administrative procedures in the enforcement of intellectual property rights, criminal procedures and sanctions, and various national experiences.

In this respect, the ACE maintained the global importance of continued judicial training in the field of intellectual property and the need to raise awareness of intellectual property enforcement issues at all levels of the judiciary. In line with this, the Committee agreed that education and awareness-building will be one of the major themes of discussion in its next session to be held in 2006.

#### (iv) *The WIPO Arbitration and Mediation Center*

The activity of the WIPO Arbitration and Mediation Center is a truly global service, with procedures in 11 languages, domain names in a variety of scripts, and parties from 118 countries. In 2004, the Center received some 1,179 new domain name cases under the Uniform Domain Name Dispute Resolution Policy (UDRP), representing a 6.6 per cent increase compared to 2003. Most disputes concerned international domains with ".com" representing over 80 per cent of names involved. The Center also dealt with 70 cases involv-

ing country-code top-level domains (ccTLDs) corresponding to a 37% increase compared to 2003. Services were provided for disputes in 43 ccTLDs, including “.ch” (Switzerland), “.fr” (France) and “.ir” (Iran (Islamic Republic of)) to which the Center has also rendered advice and assistance in the drafting of dispute resolution policies.

The Center produced and disseminated information on the options for the out-of-court settlement of intellectual property disputes, including a brochure describing WIPO arbitration processes and the contribution that arbitration makes to the effective functioning of intellectual property transactions.

(v) *New members and new accessions*

In 2004, 56 new instruments of ratification and accession were received and processed and 81 notifications of treaty actions were issued in respect of WIPO-administered treaties.

The following figures show the new country adherences to the treaties, with the second figure in brackets being the total number of States parties to the corresponding treaty by the end of 2004.<sup>420</sup>

(a) Convention Establishing the World Intellectual Property Organization, 1967: 2 (181);

(b) Paris Convention for the Protection of Industrial Property, 1883: 2 (168);

(c) Berne Convention for the Protection of Literary and Artistic Works, 1886: 5 (157);

(d) Patent Cooperation Treaty, 1970: 1 (124);

(e) Madrid Agreement Concerning the International Registration of Marks, 1891: 2 (56);

(f) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989: 4 (66);

(g) Trademark Law Treaty, 1994: 3 (33);

(h) Patent Law Treaty, 2000: 2 (9);

(i) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957: 2 (74);

(j) Locarno Agreement Establishing an International Classification for Industrial Designs, 1968: 1 (44);

(k) Strasbourg Agreement Concerning the International Patent Classification, 1971: 1 (55);

(l) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973: 1 (20);

(m) WIPO Copyright Treaty, 1996: 6 (50);

(n) WIPO Performances and Phonograms Treaty, 1996: 6 (48);

(o) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958: 2 (22);

(p) Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, 1891: 1 (34);

<sup>420</sup> For the texts and status of the conventions listed in this section, see under “Treaties” at [www.wipo.int](http://www.wipo.int).



- (q) Nairobi Treaty on the Protection of the Olympic Symbol, 1981: 2 (43);
- (r) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977: 2 (60);
- (s) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: 3 (79);
- (t) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971: 1 (73);
- (u) Hague Agreement concerning the International Deposit of Industrial Designs: 2 (31), 1925; and
- (v) Geneva Act of the Hague Agreement, 1999: 5 (16).

## 11. International Fund for Agricultural Development

### (a) Cooperation agreements, memoranda of understanding and other agreements

At its eighty-second session (8–9 September 2004), the Executive Board authorized the International Fund for Agricultural Development (IFAD) to establish a cooperation agreement with the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.<sup>421</sup> A memorandum of understanding between IFAD and GTZ GmbH was signed on 14 September 2004 and submitted to the Executive Board at its eighty-third session (1–2 December 2004) for information.<sup>422</sup>

Also at its eighty-second session, the Executive Board authorized<sup>423</sup> IFAD to adhere to the Financial and Administrative Framework Agreement between the European Union, represented by the European Commission, and the United Nations, signed on 29 April 2003.<sup>424</sup> The agreement was signed on 27 September 2004 and submitted to the Executive Board at its eighty-third session.<sup>425</sup>

At its eighty-third Session, the Executive Board further authorized IFAD to establish a cooperation agreement with the Organization for Economic Cooperation and Development, and a memorandum of understanding with the International Bank for Reconstruction and Development, as trustee of the BioCarbon Fund, in respect of the Dryland Management Tranche under the BioCarbon Fund.<sup>426</sup>

### (b) Legal developments

At its twenty-seventh session (18–19 February 2004), the Governing Council of IFAD approved by resolution 134/XXVII, the delegation of authority from the Governing Council to the Executive Board to decide on the establishment of all multi-donor trust funds.

<sup>421</sup> EB 2004/82/R.33.

<sup>422</sup> EB 2004/83/INF.4.

<sup>423</sup> EB 2004/82/R.32.

<sup>424</sup> United Nations, *Treaty Series*, vol. 2213, p. 39.

<sup>425</sup> EB 2004/83/INF.3.

<sup>426</sup> EB 2004/83/R.48.

The Executive Board, at its eighty-second session, adopted IFAD's Human Resources Policy,<sup>427</sup> which replaced the Personnel Policies Manual, adopted by the Executive Board at its third session in 1978 and amended regularly since. The Human Resources Policy provides guiding principles of the various human resources management processes, in accordance with which the President shall manage the employees of IFAD.

## 12. World Trade Organization

### (a) Membership

During 2004, Cambodia and Nepal became members of the World Trade Organization, making the total membership at the end of the year 148.

### (b) Dispute settlement

During 2004, 19 requests for consultation were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).<sup>428</sup> The Dispute Settlement Body established panels in the following cases:

- (i) Dominican Republic – Measures affecting the importation and internal sale of cigarettes, complaint by Honduras (WT/DS302);
- (ii) United States – Countervailing duty investigation on dynamic random access memory semiconductors (DRAMs) from Korea, complaint by Korea (WT/DS296);
- (iii) European Communities – Countervailing measures on dynamic random access memory chips from Korea, complaint by Korea (WT/DS299);
- (iv) European Communities – Measures affecting commercial vessels, complaint by Korea (WT/DS301);
- (v) United States – Laws, regulations and methodology for calculating dumping margins (“zeroing”), complaint by the European Communities (WT/DS294);
- (vi) Mexico – Tax measures on soft drinks and other beverages, complaint by the United States (WT/DS308); and
- (vii) Korea – Anti-dumping duties on imports of certain paper from Indonesia, complaint by Indonesia (WT/DS312).

During the same year, the Dispute Settlement Body adopted panel and Appellate Body reports on the following cases:

- (i) Mexico – Measures affecting telecommunications services, complaint by the United States (WT/DS204) (panel report);

<sup>427</sup> EB 2004/82/R.28/Rev.1.

<sup>428</sup> United Nations, *Treaty Series*, vol. 1869, p. 401 (annex 2).

- (ii) United States – Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, complaint by Japan (WT/DS244) (panel and Appellate Body reports);
- (iii) European Communities – Conditions for the granting of tariff preferences to developing countries, complaint by India (WT/DS246) (panel and Appellate Body reports);
- (iv) United States – Final countervailing duty determination with respect to certain softwood lumber from Canada, complaint by Canada (WT/DS257) (panel and Appellate Body reports);
- (v) United States – Final dumping determination on softwood lumber from Canada, complaint by Canada (WT/DS264) (panel and Appellate Body reports);
- (vi) United States – Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina, complaint by Argentina (WT/DS268) (panel and Appellate Body reports);
- (vii) Canada – Measures relating to exports of wheat and treatment of imported grain, complaint by the United States (WT/DS276) (panel and Appellate Body reports); and
- (viii) United States – Investigation of the International Trade Commission in softwood lumber from Canada, complaint by Canada (WT/DS277) (panel report).

The Dispute Settlement Body further authorized the suspension of concessions or other obligations pursuant to article 22, paragraph 6, of the DSU in the following cases:<sup>429</sup>

- (i) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Brazil – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/BRA);
- (ii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Canada – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS234/ARB/CAN);
- (iii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Chile – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/CHL);
- (iv) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/EEC);
- (v) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by India – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/IND);

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<sup>429</sup> WT/DSB/M/178 in respect of Brazil, the European Communities, India, Japan, Republic of Korea, Canada and Mexico and WT/DSB/M/180 in respect of Chile.

- (vi) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Japan – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/JPN);
- (vii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Korea – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS217/ARB/KOR); and
- (viii) Decision by the Arbitrator, United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by Mexico – Recourse to Arbitration by the United States under Article 22.6 of the DSU (WT/DS234/ARB/MEX).